



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vault Pipelines LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on May 13, 2020 (the "Application") which was adjourned to a participatory hearing. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on June 15, 2020 as a teleconference hearing. A.E. appeared on behalf of the Tenants and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that A.E. and I were the only persons who had called into this teleconference.

A.E. testified the Application and documentary evidence package was served on the Landlord by email on May 22, 2020. A.E. stated he and the Landlord have maintained regular communication via email. The Tenants provided a recent email discussion dated April 18, 2020 around the return of the security deposit in support.

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended: a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given

or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*
- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed.*

I find that the Tenants provided sufficient evidence to demonstrate that the Landlord's email was routinely and recently used to correspond with the Tenants relating to tenancy matters. As such, I find that the Tenants' Application and documentary evidence was sufficiently served pursuant to Section 71 of the Act. The Landlord provided some documentary evidence in response to the Tenants' Application, however, no one appeared for the Landlord during the hearing to present the evidence for my consideration.

A.E. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?

2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

A.E. testified that the tenancy began on August 1, 2019, and ended on March 10, 2020. During the tenancy, rent in the amount of \$4,600.00 was due to be paid to the Landlord on the first day of each month. A.E. testified that the Tenants paid a security deposit in the amount of \$2,225.00 which the Landlord continues to hold. The Tenants submitted a copy of the tenancy agreement in support.

A.E. testified that he sent the Landlord an email on April 18, 2020 containing the Tenants forwarding address, as well as a request for the return of the Tenants' security deposit. A.E. stated that the Landlord responded the Tenants on April 18, 2020 confirming that the Landlord received the Tenants' forwarding address. The Tenants provided a copy of the email exchange between the parties in support.

A.E. testified that the tenancy ended on March 10, 2020, and that there was no move out condition inspection completed at the end of their tenancy. A.E. stated that the Tenants did not consent to the Landlord retaining any portion of their deposit and that the Tenants have not yet received any amount of their deposit from the Landlord.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on March 10, 2020 and provided the Landlord with their forwarding address by email on April 18, 2020. The Landlord responded by email on April 18, 2020 regarding the Tenants request for their security

deposit to be returned. I find that the Tenants provided sufficient evidence to demonstrate that the Landlord received the Tenants' forwarding address by email on April 18, 2020. As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until May 3, 2020, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord ($\$2,225.00 \times 2 = \$4,450.00$).

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$4,550.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenants are granted a monetary order in the amount of \$4,550.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2020

Residential Tenancy Branch