



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 680926 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenants seek compensation pursuant to section 38 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on April 25, 2020 and an arbitration hearing was held on August 31, 2020. The tenants, the landlord (who also represented the numbered company landlord), and a witness for the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Are the tenants entitled to compensation related to their security deposit?
2. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on September 1, 2019 and ended on March 31, 2020. Monthly rent was \$2,000.00 and the tenants paid a security deposit of \$1,000.00. A copy of the written residential tenancy agreement was submitted into evidence.

The landlord returned \$450.00 of the tenants’ security deposit, but not the balance of \$550.00. The tenants seek the return of the balance and request a doubling of that amount pursuant to section 38(6) of the Act for a total of \$1,100.00.

As for the provision of their forwarding address, the tenants testified that they sent an email to the landlord on April 8, 2020 in which they included both of the tenants' forwarding addresses. The landlord acknowledged that he received the forwarding address on about this date. A copy of this email was submitted into evidence.

The landlord testified about various damages and issues with the rental unit, including such things as a burned carpet that needed replacing and a knife damage to a hutch.

The landlord submitted a copy of a letter, which he sent to the tenants, in which he listed several charges that he sought to recover from the tenants. At the end of the letter, the landlord states that "I will deduct \$550 from your \$1000 deposit and return \$225 to each of you at the address you provided unless I otherwise hear from you." I note that the landlord returned the \$450.00 to the tenants before 15 days had elapsed.

In the landlord's written submission, the landlord remarks that "Likewise, it was clearly explained to [the tenant S.D.] that the cost of the repairs would be deducted from the security deposit, to which she agreed clearly." I asked the landlord about how the tenants agreed, to which he explained that "they didn't really agree." However, he said that the tenants refused to communicate about the deductions and the damage.

The tenants testified that they did not consent, either in writing or orally, to the landlords retaining any of their security deposit.

Because the landlord provided sufficient evidence in relation to the circumstances surrounding the return (and non-return) of the security deposit, and because this is not the landlord's application for compensation related to any damages that may have been caused to the rental unit, I did not hear from the landlord's witness.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Security Deposit

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Subsection 38(4)(a) of the Act states that

A landlord may retain an amount from a security deposit or a pet damage deposit if, [...] at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

In this dispute, the tenants did not agree in writing that the landlords could retain any of the security deposit. As such, the landlords were not entitled to retain \$550.00 of the tenants' security deposit.

Regardless of whether the landlord thinks that they are entitled to compensation from the tenants, the landlord had the tenants' forwarding address in writing on April 8, 2020 and did not file an application for dispute resolution within 15 days of receiving the forwarding addresses claiming against the \$550.00.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for the return of the \$550.00.

Claim for Doubling of Security Deposit

Section 38(6) of the Act states that

- (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, I find that the landlords did not comply with subsection 38(1) of the Act and therefore must pay the tenants double the amount of the security deposit in the amount of \$1,100.00.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. Because the tenants were successful in their application, I grant them compensation in the amount of \$100.00 for the cost of the Residential Tenancy Branch \$100.00 filing fee.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$1,200.00, which must be served on the landlords. Should the landlords fail to pay the tenants the amount owed, the tenants may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 31, 2020

Residential Tenancy Branch