



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord"), the two tenants, and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 28 minutes.

The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. The two tenants confirmed that their agent, who is their daughter, had permission to speak on their behalf. The tenants' agent intended to call her husband as a witness, who was excluded from the outset of the hearing. The tenants' agent did not recall her witness later at the hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlord. An "interim decision," dated July 27, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord was in receipt of the interim decision, notice of reconvened hearing and all other required documents. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the above documents.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' agent confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

Both parties confirmed that they were ready to proceed with the hearing.

Issues to be Decided

Are the tenants entitled to a return of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and ended on October 30, 2018. Monthly rent in the amount of \$1,375.00 was payable on the first day of each month. A security deposit of \$687.50 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not file an application for dispute resolution to retain any amount from the tenants' security deposit. The landlord did not have written permission to keep any amount from the tenants' security deposit.

The tenants' agent stated that the tenants gave a written forwarding address letter to the landlord's agent on October 30, 2018, during the move-out condition inspection, along with the keys and the remote for the rental unit.

The landlord said that she spoke to the landlord's agent, who attended the move-out condition inspection, since she was not present. She stated that she was told that he did not receive a written forwarding address from the tenants at that time. She maintained that he is now retired, and he did not appear at this hearing to testify. The landlord stated that a forwarding address was received by the landlord on July 13, 2020, which is more than one year after the end of the tenancy on October 30, 2018, so the landlord was entitled to keep the tenants' security deposit.

The tenants seek a return of their security deposit of \$687.50 plus the \$100.00 filing fee paid for this application. The landlord disputes the tenants' application, claiming that the tenants did not provide a forwarding address within one year and they owe liquidated damages to the landlord.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The following evidence is undisputed. The tenancy ended on October 30, 2018. The tenants did not give the landlord written permission to retain any amount from the security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. I find that the tenants provided a written forwarding address to the landlord, by way of a letter, dated October 29, 2020, which was provided to the landlord's agent at the move-out condition

inspection on October 30, 2018. The tenants provided a copy of this letter for the hearing. Both tenants testified, under oath, that they provided this letter to the landlord's agent. The landlord claimed that she was told that the landlord's agent did not receive the forwarding address, but she herself was not present at the move-out condition inspection, so this information is hearsay. The landlord's agent did not appear at this hearing to give affirmed testimony under oath.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$687.50, totalling \$1,375.00. There is no interest payable on the deposit during the period of this tenancy. Although the tenants did not apply for double the value of their deposit, they are not required to do so, as I must consider this claim. I find that they did not waive their right to double the deposit at the hearing.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,475.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 31, 2020

Residential Tenancy Branch