



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The Tenants' Application for Dispute Resolution was made on July 31, 2020 (the "Tenants' Application"). The Tenants applied for the following relief, pursuant to the *Act*:

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

The Tenants and the Landlords attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order granting the return 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

The parties testified and agreed that the tenancy began on May 1, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$2,500.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,250.00. The tenancy ended on December 31, 2019.

The Tenants stated that following the end of the tenancy, the Tenants provided the Landlords with their forwarding address in writing on January 3, 2020 requesting the return of their security deposit, less the amount owed to the Landlords for utilities. The Tenants stated that they have not yet received any amount from the Landlords and that the Tenants did not consent to the Landlords retaining the full amount as they suspect the utilities owed would be around \$300.00. The Tenants stated that the parties had a previous hearing on June 8, 2020 in which the Landlords were unsuccessful in retaining the Tenants security deposit for damage or loss. As such, the Tenants feel as though they are entitled to the return of their deposit.

The Landlords responded and acknowledged receipt of the Tenants' forwarding address on January 5, 2020. The Landlords confirmed that their previous Application for monetary compensation and to retain the Tenants' security deposit was dismissed. The Landlords stated that they feel it is within their right to retain the Tenants' security deposit in relation to some unpaid bills which were equivalent to the amount of security deposit being held by the Landlords.

The Tenants stated that they sent another request to the Landlords by registered mail on July 9, 2020 requesting the full return of the Tenants security deposit to be sent to the Tenants forwarding address. The Tenants stated that they have not yet received any amounts from the Landlords.

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, I accept that the Tenants vacated the rental unit on December 31, 2019 and provided the Landlords with their forwarding address on January 3, 2020. I accept that the Tenants requested the return of their deposit less the amount owed to the Landlords for utilities. I find that the parties did not reach an agreement about how much of the deposit the Landlords were entitled to retain.

During the hearing, the Landlords confirmed receipt of the Tenants' forwarding address on January 5, 2020. I accept that after receiving the Tenants' forwarding address, the

Landlords applied to retain the Tenants' security deposit for damage or loss. I find that in the previous arbitrator's decision dated June 25, 2020 the Landlords' Application to retain the Tenants' security deposit was dismissed. As such, I find that the Landlords were not entitled to retaining the Tenants' security deposit.

As there is no evidence before me that that the Landlords were entitled to retaining 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 Landlords had until July 10, 2020, to repay the Tenants' security deposit.

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 of the amount of security deposit paid to the Landlord (\$1,250.00 x 2 = \$2,500.00). 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 \$2,600.00.

Conclusion

The Landlords breached Section 38 of the Act. The Tenants are granted a monetary order in the amount of \$2,600.00. 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: September 16, 2020

Residential Tenancy Branch