



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on May 14, 2020, wherein they sought monetary compensation from the Landlord in the amount of \$2,000.00.

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on September 15, 2020. Only the Tenant, E.M. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Tenant's evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on May 17, 2020 by email. She also provided the Landlord with all her evidence by email on May 30, 2020. Copies of those emails were provided in evidence before me.

At the time of service and by Director's Order dated March 30, 2020 notice of a hearing was able to be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The Tenant testified that they communicated with the Landlord by email during the tenancy; copies of such communication were provided in evidence before me. As such, I find that the Landlord was deemed served with Notice of this participatory hearing May 20, 2020, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began September 30, 2019. Monthly rent was \$4,000.00 per month.

The Tenant testified that at the beginning of the tenancy the Landlord requested that they prepay \$4,000.00 including \$2,000.00 as a security deposit and \$2,000.00 as prepayment of their last month's rent. They provided this sum, but when the tenancy ended on March 18, 2020, the Landlord only returned \$2,000.00. In the claim before me the Tenants sought return of the \$2,000.00 retained by the Landlord.

The Landlord did not call into the hearing to dispute the Tenants' claim for return of the \$2,000.00. The Tenant testified that to her knowledge the Landlord also did not apply for an order to retain those funds.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find as follows.

Section 2 of the *Residential Tenancy Act* defines security deposit as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property,

Further guidance can be found in *Residential Tenancy Policy Guideline 29—Security Deposit* which reads in part as follows:

[Section 17] of the Residential Tenancy Act permits a landlord to collect a security deposit. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of "security deposit" [in section 2] , which also contains exclusions. As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:

- The last month's rent;
- A fee for a credit report or to search the records of a credit bureau;
- A deposit for an access device, where it is the only means of access;
- Development fees in respect of a manufactured home site;
- A move-in fee in respect of a manufactured home;
- Carpet cleaning deposit or other monies paid to secure possible future expenses;
- Blank signed cheques provided as security, where the amount could exceed one half of one month's rent;
- A furniture deposit in respect of furnished premises.

[Section 19(1) of] the *Residential Tenancy Act* requires that a security deposit must not exceed one-half of one month's rent. [As such,] if one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act [section 19(2) and 67] would be available to a tenant.

In the case before me the Landlord accepted a security deposit in the amount of \$2,000.00 in addition to payment of the first month's rent in the amount of \$2,000.00. As rent was only \$4,000.00 per month the Landlord collected \$2,000.00 over and above the allowable amount.

Accordingly, and pursuant to sections 19(2) and 67 of the *Act*, the Tenants are entitled to return of the \$2,000.00 overpaid. I therefore grant their request for recovery of these funds.

Conclusion

The Tenants are entitled to return of the \$2,000.00 paid to the Landlord over and above the allowable deposits pursuant to section 19 of the *Act*. In furtherance of this I grant

the Tenants a Monetary Order in the amount of **\$2,000.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 18, 2020

Residential Tenancy Branch