



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rainbow Kerrisdale Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on June 15, 2020 (the "Application"). 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 Tenants and the Landlord's Agent 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.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord 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

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 \$1,950.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00. The tenancy ended on April 30, 2020.

The parties testified and agreed that the Tenants provided their forwarding address to the Landlord on April 30 and May 4, 2020. The Landlord's Agent confirmed receipt. The Tenants stated that the parties had email communications regarding the condition of the rental unit. The Tenants stated that the Landlord was withholding their deposit which prompted them to submit their Application for the return of their deposit as they did not consent to the Landlord retaining their deposit.

The Tenants stated that after they submitted their Application, they received two cheques in the amount of \$450.00 which were dated May 13, 2020. The Tenants stated that they did not receive these cheques until June 19, 2020. The Tenants provided a copy of the envelope which contained the cheques which was stamp dated June 17, 2020. As such, the Tenants stated that the Landlord did not return the Tenant's deposits in accordance with the Act.

The Landlord's Agent stated that the Landlord mailed the Tenants' their deposit on May 14, 2020 and that due to the Covid-19 state of emergency, the post office was delayed in delivering the mail during this time.

The Tenants referred to an email from the Landlord and the Tenants dated May 19, 2020 which reads;

"So we checked the apartment again and it was still not thoroughly/fully cleaned/repaired, such as the carpet, the oven/stove area, the walls and the bathroom. Please see the pictures below for some examples. If you would like more pictures, please let us know. We have been nice enough already given you two chances and lots of flexibility. It is our intention to work with you to help you get some money. We can give you last chance till May 24 to resolve. Please let us know what you think in two days."

The Tenants stated that this email demonstrates that the Landlord had not yet returned their deposit as of May 19, 2020 which is contrary to what the Landlord's Agent had indicated in the hearing.

The Landlord's Agent stated that the Landlord employs several staff members and that the Tenant's deposit was sent out on May 14, 2020 regardless of what the Landlord's Agent had indicated in the May 19, 2020 email to the Tenants.

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 April 30, 2020 and provided the Landlord with their forwarding address on April 30, 2020 and May 4, 2020. The Landlord's Agent confirmed receipt of the Tenant's forwarding address on the above-mentioned dates.

I find pursuant to section 38(1) of the *Act*, that the Landlord had until May 19, 2020 to repay the deposit in the amount of \$900.00 to the Tenants or make an application for dispute resolution if the Landlord felt entitled to retaining some, or all of the Tenants' deposit.

While the Landlord's Agent stated that the Landlord mailed to cheques to the Tenants on May 14, 2020, I find that the Landlord provided insufficient evidence to support the date of the mailing.

I accept that Tenants' testimony that they did not receive their security deposit until June 19, 2020. I accept that the envelope containing the Tenants' deposit was stamped by the post office on June 17, 2020. I further accept that on May 19, 2020 the Landlord

was still discussing the condition of the rental unit with the Tenants, wanting to work with the Tenants to get them some money back. I find that on a balance of probabilities that the Landlord had not yet returned the Tenant's their deposit as of May 19, 2020.

As there is no evidence before me that 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 and provided insufficient evidence to demonstrate that they returned the deposit to the Tenants on or before May 19, 2020 or made an application for dispute resolution, I find pursuant to section 38(6) of the *Act*, the Tenants are entitled to an award of double the amount of the security deposit ($\$900.00 \times 2 = \$1,800.00$).

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 \$1,900.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenants are granted a monetary order in the amount of \$1,900.00. 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: October 07, 2020

Residential Tenancy Branch