



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on June 20, 2020, in which the Tenants sought an Order for return of their security deposit as well as recovery of the filing fee.

The hearing of the Tenant's Application was conducted by teleconference at 1:30 p.m. on October 29, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant F.L. called in, as did the Landlord, M.K. and the Landlord's spokesperson, S.K.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The residential tenancy agreement was provided in evidence before me. This agreement was signed on February 22, 2020 indicating that this tenancy was to begin on March 1, 2020. The Tenants moved into the rental unit on April 4, 2020 and moved out on April 30, 2020.

The Tenants provided the Landlords with her forwarding address by letter dated on May 25, 2020. A copy of this letter was provided in evidence before me.

The Tenant testified that the Landlord refunded her March 2020 rent but failed to provide her with her security deposit. In support, the Tenant provided in evidence a text message from the Landlord to the Tenant dated Friday May 1, 2020 in which the Landlord wrote:

"I have returned your March rent by e-transfer, the rest to follow. The answer to the e-transfer is "March rent"."

At the hearing before me, the Landlords' spokesperson confirmed that it was the Landlord's position that the funds returned by e-transfer included the Tenant's security deposit. In support he referred to a text message sent by the Landlord to the Tenant on June 4, 2020 at 3:36 p.m. in which the Landlord characterized this payment as the security deposit and ½ months' rent. The following text message was provided in evidence.

"So clarification for the money 1200.00 already given to you by e-tsf 600.00 is for damage deposit and balance is for half months rent for April. I do not pay people to move from [redacted] to [redacted]. Thank you kindly also I have had the suite checked the 2nd time and not rats or mice droppings have been found inside the suite. I have it all on the invoice. So how about you pay for all the charges that I have paid pest control guy and you can pay the rent until I can get suite rented again..."

The Landlord, also M.K., testified as follows. In terms of the \$1,200.00 return of funds, M.K., stated that she returned these funds and panicked due to the "pest issue" in the basement. She then had a pest control person check the suite and realized there was no such issue. At that time, she felt that she was being "frauded" by the Tenant. M.K. stated that at that point she realized she had already overpaid her Tenant and then she decided to say that \$600.00 was for the security deposit and \$600.00 was for half a month's rent for April for the "hassle" of renting her suite.

Analysis

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

This tenancy was for a short duration and ended due to concerns the tenant raised about the condition of the rental unit. I find that the parties agreed to the end of the tenancy as well as return of the Tenant's rent payment for the month of March 2020.

The evidence confirms that the Landlord returned the Tenant's rent in the amount of \$1,200.00 by electronic transfer. The documentary evidence before me confirms this payment represented return of the Tenant's rent.

The Landlord testified that after she returned the Tenant's rent, she discovered that the Tenant's concerns regarding the rental unit were unfounded. The Landlord stated that she felt "frauded" by the Tenant. While the Landlords may have later regretted this payment, it is not open to her to re-characterize those funds as the Tenant's security deposit after the fact.

I therefore find the Landlords have not returned the Tenant's security deposit.

The Tenant requests return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

I accept the Tenant's evidence that she did not agree to the Landlords retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address in writing on May 30, 2020, five days after the letter was sent to the Landlords.

I find the Landlords failed to return the Tenants' security deposit nor did they apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants or an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$1,300.00**, comprised of double the security deposit (2 x \$600.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants' application for return of their security deposit is granted. As the Landlords failed to follow section 38 of the *Act*, the Tenants are entitled to return of double the deposit paid. Further, having been successful in their Application, the Tenants are entitled to recover the filing fee.

In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$1,300.00**. The Tenants must serve a copy of the Order on the Landlords as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: November 19, 2020

Residential Tenancy Branch