



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on September 18, 2020 (the "Application") and was adjourned to a participatory hearing. 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 hearing was scheduled for 9:30 am on December 11, 2020 as a teleconference hearing. Only the Tenants appeared at the appointed date and time. No one appeared for the Landlords. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenants and I were the only persons who had called into this teleconference.

The Tenants testified the Application and documentary evidence package was served on the Landlords by registered mail on October 9, 2020. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Application and documentary evidence on October 14, 2020, the fifth day after their registered mailing. The Landlords did not submit any documentary evidence in response to the Application.

The Tenants 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 Landlords 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 Tenants testified that the tenancy began on May 1, 2020 and ended on September 1, 2020. During the tenancy, rent was due in the amount of \$1,500.00 per month. The Tenants testified that they paid a security deposit of \$750.00 and a pet damage deposit in the amount of \$750.00, both of which the Landlords continue to hold. The Tenants provided a copy of the tenancy agreement as well as banking records confirming the security deposit and pet deposits that were paid to the Landlords.

The Tenants testified that they provided their forwarding address in writing to the Landlords during their move out inspection of the rental unit which took place on September 1, 2020. The Tenants stated that they did not consent to the Landlords deducting any amount of their deposits, and that the Landlords have failed to return the Tenants' deposits or make a claim to retain them. As such, the Tenants are seeking the return of double the amount of their deposits as well as to recover the filing fee paid to make the Application.

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 September 1, 2020 and provided the Landlords with their forwarding address in writing on September 1, 2020 during the move out inspection of the rental unit. In accordance with Section 90 of the *Act*, I find that the Landlords are deemed to have been served with the Tenants' forwarding address on September 1, 2020.

As there is no evidence before me that that the Landlords were entitled to retain any portion of the security or pet damage deposits 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 September 16, 2020 to repay the deposits or make an application for dispute resolution. The Landlords did neither.

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 the amount of the security and pet damage deposits paid to the Landlords (\$1,500.00 x 2 = **\$3,000.00**)

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 is entitled to a monetary order in the amount of **\$3,100.00**.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$3,100.00. 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: December 11, 2020

Residential Tenancy Branch