



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of their security deposit; and
- recovery of the filing fee.

The tenants and landlord KR (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The landlord confirmed receiving the tenants' evidence. The tenants confirmed receipt of most of the landlords' evidence. The tenants denied receiving a copy of the condition inspection report (CIR) and 3 photos of a wall.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Issue(s) to be Decided

Are the tenants entitled to their security deposit and to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The undisputed evidence is that this tenancy began on February 1, 2020, monthly rent was \$2,250, and the tenants paid a security deposit of \$1,125. Filed into evidence was a copy of the written tenancy agreement.

The undisputed evidence is that the tenancy ended on August 31, 2020.

The tenants submitted that they provided the landlord with their written forwarding address on the third page of the condition inspection report (CIR), on August 31, 2020. As to the CIR, the tenants denied receiving a copy of the move-in or move-out report.

The tenants submitted that the landlord has returned a part of their security deposit, or \$925, but not until the cheque was mailed on September 16, 2020. The tenant said that they have not cashed the cheque sent by the landlord.

The tenants' evidence showed that they agreed the landlords could retain \$200 for the move-out elevator use, charged by the strata.

Landlord's response-

The landlord confirmed receiving the tenants' written forwarding address on the CIR and said that she deducted the agreed upon amount of \$200 and returned the remaining balance of \$925, by cheque, which was mailed on September 15, 2020, according to the landlord.

The landlord said that she always intended to return the security deposit to the tenants, but that she wanted to do so by email. The landlord said that she begged the tenants for their email address, but ultimately, when it was not given, she mailed the security deposit cheque.

The landlord at one point in the hearing said that she returned the security deposit on September 16, 2020, when the tenants said the cheque was dated September 16, 2020, but the landlord then said the cheque was dated September 16, 2020, as the

tenants would receive it by the 16th, saying again it was mailed by regular mail on the 15th.

Tenants' rebuttal –

Tenant, TA, said that the landlord already had their email address as the monthly rent payment was paid every month from tenant, MM's, account.

The tenant said that the landlord did not initiate the return of the security deposit until September 16, 2020.

I note that both parties provided extensive submissions about whether the tenants received a copy of the move-in and move-out condition inspection report. The tenants submitted that the only time they received a copy was the one page received in the landlord's evidence.

The landlord referred multiple times to providing the tenants with "documents" at the beginning and end of the tenancy, which also referred to the tenancy agreement, according to the landlord. The landlord said all the documents were mailed to the tenants, but when asked further, the landlord said they were given to the tenants at the beginning and end of the tenancy. Then the landlord said the tenants had their separate copy of the written tenancy agreement and the condition inspection report.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

Despite subsection (1), Section 38(4) of the Act allows a landlord to retain the tenant's security deposit at the end of a tenancy if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In the case before me, the undisputed evidence shows that the tenancy ended on August 31, 2020, and that the landlord received the tenants' forwarding address also on August 31, 2020, on the condition inspection report.

Due to the above, I find the landlords were obligated to return the tenants' security deposit, in full, or make an application for dispute resolution claiming against the security deposit by September 15, 2020, 15 days after they received the forwarding address.

In this case, there was disputed oral evidence as to the date the landlord returned the security deposit. I then reviewed the written submissions, and in this case, the text messages between the tenants and the landlord, submitted by the landlord.

On September 15, 2020, the landlord texted the tenant, sometime after 8:17 p.m., again asking the tenant about a decision, apparently which was whether the landlord could retain \$100 for alleged damage to a wall, stating that her son had to go to bed. On September 16, 2020, at 11:33 a.m., the landlord texted the tenant asking for tenant MM's email address, and at 11:10 p.m., on September 16, 2020, the landlord texted the tenant saying she had mailed the security deposit to the tenants.

I find this written evidence shows, on a balance of probabilities, and in the landlord's own words, that the landlord mailed the tenants' security deposit on September 16, 2020, although she was required to return it by September 15, 2020, less the agreed upon amount of \$200. I therefore find the tenants are entitled to a return of their security deposit, less the tenant agreed upon deduction of \$200, and that I must double this amount.

Due to their successful application, I grant the tenants recovery of their filing fee of \$100.

For the above reasons, I find the tenants have established a monetary claim of **\$1,950**, comprised of their security deposit of \$1,125, less the tenant authorized deduction of \$200, or **\$925**, doubled to **\$1,850**, plus the filing fee paid for this application of **\$100** ($\$1,125 - \$200 = \$925 \times 2 = \$1,850 + \$100 = \$1,950$).

I note that while the landlord has sent the tenants a cheque for the balance of their security deposit, the tenants have not deposited or cashed the cheque. I have not taken that amount into consideration when making this Decision. I **direct** the tenants to return the cheque to the landlords.

Conclusion

I issue the tenants a monetary order in the amount of \$1,950.

Should the landlords fail to pay the tenants this amount without delay, the order may be served upon the landlords and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

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: January 12, 2021

Residential Tenancy Branch