



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the “*Act*”) and dealt with an Application for Dispute Resolution filed by the Tenants for a monetary order for the return of the security deposit and for the recovery of the filing fee paid to make the application.

The Tenants submitted a signed Proof of Service - Tenant's Notice of Direct Request Proceeding which declares that the Tenants served the Landlord with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 14, 2021. The Tenants provided a copy of the Canada Post receipts containing the Tracking Number to confirm this mailing. Based on the written submissions of the Tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on December 19, 2021, five days after they were mailed.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenants on August 28, 2017, indicating a monthly rent of \$1,600.00 and a security deposit of \$800.00, for a tenancy commencing on September 1, 2017;
- A copy of a bank statement indicating e-transfers totaling \$2,400.00 on September 5, 2017;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated November 26, 2020 (the "Notice of Forwarding Address");
- A copy of a Proof of Service - Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit which indicates that the Notice of Forwarding Address was sent to the Landlord by registered mail December 15, 2020;
- Copies of Canada Post receipts containing the Tracking Number to confirm the Notice of Forwarding Address was sent to the Landlord by registered mail on December 15, 2020;
- A copy of a Tenant's Direct Request Worksheet dated November 26, 2020 showing the amount of the security deposit paid (\$800.00), the amount returned to the Tenants (\$165.00), and the date the tenancy ended (March 31, 2020);
- A copy of the Condition Inspection Report; and
- A copy of an email exchange in which the Landlord requests a forwarding address on March 7, 2020 and the Tenants provide an incomplete forwarding address on March 9, 2020.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposits in full or make an application for dispute resolution claiming against the deposits.

Section 38(6) of the *Act* states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposits.

I have reviewed all documentary evidence and I find that the Tenants paid a security deposit in the amount of \$800.00, as per the tenancy agreement.

I accept the Tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on March 31, 2020.

I accept the following declarations made by the Tenants on the Tenant's Direct Request Worksheet:

- The Tenants have not provided consent for the Landlord to keep all or part of the security deposit;
- There are no outstanding monetary orders against the Tenants for this tenancy; and
- The Tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

In accordance with sections 88 and 90 of the *Act*, I find that the Landlord is deemed to have received the Tenants' forwarding address in writing on December 20, 2020, five days after it was sent to the Landlord by registered mail.

I accept the evidence before me that the Landlord returned only \$165.00 to the Tenants and retained \$635.00 as per the Tenant's Direct Request Worksheet. I also accept that the Landlord has not filed an Application for Dispute Resolution requesting to retain the security deposit within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the Landlord must pay the Tenants double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Policy Guideline #17 provides examples to help calculate the amount of the security deposit payable to a tenant. In this case, I find the following example most like the current circumstances:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit (\$400 x 2 = \$800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 (\$800 - \$275 = \$525).

In accordance with the example provided above, I find the Tenants are entitled to a monetary award in the amount of \$1,435.00 which has been calculated as follows:

$$\$800.00 \times 2 = \$1,600.00$$

$$\$1,600.00 - \$165.00 = \mathbf{\$1,435.00}$$

As the Tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,535.00 for the return of double the security deposit and for the recovery of the filing fee for this application. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: February 2, 2021

Residential Tenancy Branch