



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD. and
[tenant name suppressed to protect privacy]

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 by the Tenants for a monetary order for the return of double 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 on January 22, 2021 by leaving a copy with N.M. who acknowledged receipt by signing the Proof of Service - Tenant's Notice of Direct Request Proceeding. I find that the Landlord was served with and received these documents on January 22, 2021.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation for the return of a security deposit and/or a pet damage 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 Tenants and the Landlord, indicating a monthly rent of \$1,700.00 and a security deposit of \$850.00, for a tenancy commencing on January 1, 2018;
- A copy of a Condition Inspection Report indicating that the move-out condition inspection was completed and signed on November 30, 2020, which included the Tenants' forwarding address;
- A copy of a Tenant's Direct Request Worksheet dated January 20, 2021 showing the amount of the security deposit paid (\$850.00), the amount returned to the Tenants (\$93.50), and the date the tenancy ended (November 30, 2020);
- A copy of a cheque dated December 1, 2020 in the amount of \$93.50 (the "Repayment Cheque");
- A copy of an envelope bearing the Tenants' forwarding address which contained the Repayment Cheque;
- A copy of a type-written document summarizing deductions made by the Landlord for cleaning, handyman, and other deductions.

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 \$850.00, as per the tenancy agreement.

I accept the following declarations made 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 and pet damage 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*.

I accept the Tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on November 30, 2020.

I find that the Landlord received the Tenants' forwarding address in writing on November 30, 2020, the day of the move-out condition inspection. I am supported in this conclusion by the envelope submitted which contained the Repayment Cheque dated December 1, 2020.

I accept the evidence before me that the Landlord has failed to return the security deposit in full and has not filed an Application for Dispute Resolution requesting to retain the security deposit by December 15, 2020, within the fifteen days granted under section 38(1) of the *Act*.

I also accept that the Landlord returned only \$93.50 to the Tenants and retained \$756.50 as per the Tenant's Direct Request Worksheet and the document describing deductions from the security deposit. I also accept that the Landlord has not filed an Application for Dispute Resolution requesting to retain the security deposit.

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).

[Reproduced as written.]

In accordance with the example provided above, I find the Tenants are entitled to a monetary award in the amount of \$1,606.50 which has been calculated as follows:

$$\mathbf{\$850.00 \times 2 = \$1,700.00}$$

$$\mathbf{\$1,700.00 - \$93.50 = \$1,606.50}$$

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

Conclusion

The Tenants are granted a monetary order in the amount of \$1,706.50 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 11, 2021

Residential Tenancy Branch