



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 was convened as a result of the Tenants' Application for Dispute Resolution, made on November 28, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties 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 parties testified that the tenancy began on June 1, 2020 and ended on September 30, 2020. During the tenancy, rent was due in the amount of \$1,995.00 per month. The Tenants paid a security deposit in the amount \$997.50 which the Landlords continue to hold. The parties agreed that the Tenants provided their forwarding address in writing to the Landlords on October 2, 2020. The Landlords confirmed receipt.

The Tenants confirmed that after they provided the Landlords with their forwarding address on October 2, 2020 they have not yet received any portion of their security deposit. The Tenants stated that they did not consent to the Landlords retaining any amount of their deposit. As such, the Tenants are claiming for the return of their deposit as well as for the return of the filing fee.

The Landlords responded by stating that the Tenants did not return the keys at the end of the tenancy. The Landlords expressed some issues which took place during the tenancy. Lastly, the Landlords stated that they sent the Tenants a registered letter stating that they could collect their deposit. The Landlords confirmed that they continue to hold the Tenants' deposit and have not applied to retain any amount of the deposit.

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 30, 2020 and provided the Landlords with their forwarding address in person on October 2, 2020. The Landlords confirmed receipt on the same date. As such, I find that the Tenants' forwarding address was sufficiently served to and received by the Landlords on October 2, 2020, pursuant to Section 88 of the *Act*.

In this case, the Landlords indicated that they felt entitled to retain the Tenants' security deposit as the Tenants failed to return keys, as well as for some issues that occurred during the tenancy. I find pursuant to section 38(1) of the *Act*, that the Landlords had until October 17, 2020 to repay the deposit or make an application for dispute resolution should the Landlords felt entitled to keeping any amount. I find that the Landlords did not submit an Application to retain the Tenants' security deposit. I further find that the Landlords provided insufficient evidence to demonstrate that they returned the Tenants' security deposit in full on or before October 17, 2020.

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 deposit paid to the Landlords (\$997.50 x 2 = **\$1,995.00**)

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 are entitled to a monetary order in the amount of **\$2,095.00**.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of **\$2,095.00**. 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: March 23, 2021

Residential Tenancy Branch