



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 tenant CC and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary 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.

Preliminary and Procedural Matters-

The landlord submitted her evidence to the Residential Tenancy Branch (RTB) on April 20, 2021, which is not within the required time frame allowed by the Rules. Additionally, the tenant said she had not received the landlord's evidence, which was sent by registered mail.

I find the landlord failed to comply with the service requirements for evidence allowed by the Rules, and have therefore, not considered the evidence for consideration.

Additionally, I informed the landlord that it appeared her evidence of photographs of the rental unit were not relevant for consideration in this tenants' application.

As another preliminary matter, the parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit, doubled, and to recovery of their filing fee?

Background and Evidence

There was no prepared written tenancy agreement for this tenancy. The tenant said that the tenancy began on December 1, 2019, that it ended on November 15, 2020, that monthly rent during the tenancy was \$2,150 and the tenants paid a security deposit of \$1,075 to the landlord.

The rental unit is in the basement level of a home owned and occupied by the landlord on the upper level.

The undisputed evidence is that the landlord has not returned the security deposit to the tenants.

Tenant's submissions –

The tenants submitted that they provided the landlord with their forwarding address in a written letter, hand delivered to the landlord on October 28, 2020.

The tenants submitted that the landlord has not returned their security deposit and for this reason, the tenants are requesting that their security deposit be returned, and that this amount should be doubled.

Filed into evidence was a copy of the written letter and notice of the end of the tenancy.

Landlord's submissions –

The landlord said that she was uncertain of the date the tenancy began, but confirmed that the tenants moved out on or about November 15, 2020, when she saw a truck moving out the tenants' personal property, that monthly rent was \$2,150 and the tenants paid a security deposit of \$1,075.

The landlord confirmed that she received the tenant's forwarding address in a written letter as stated by the tenant and that she has not returned the security deposit.

The landlord confirmed she still retains the tenants' security deposit and has not filed a claim to keep it.

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, unless the tenant's right to a return of their security deposit and pet damage deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing or the end of the tenancy.

In this case, neither party raised an issue with regard to extinguishment during the hearing or in their evidence.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, I find the tenant provided sufficient evidence that the tenancy ended on November 15, 2020, that they provided their written forwarding address on October 28, 2020, and that the landlord has not returned any portion of the tenants' security deposit.

There was no evidence that the tenants authorized the landlord to retain or make deductions from their security deposit and the tenant specifically denied authorizing deductions.

I therefore find the landlord was obligated to return the tenants' security deposit, in full, or make an application claiming against the tenants' security deposit no later than November 30, 2020, 15 days after the date the tenancy ended.

In contravention of the Act, the landlord kept the security deposit, without filing an application claiming against the security deposit.

I therefore **order** the landlord to return the tenants' security deposit of \$1,075 and that this amount must be doubled.

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

I therefore find the tenants have established a monetary claim of \$2,250, comprised of their security deposit of \$1,075, doubled to \$2,150, and the filing fee paid for this application of \$100.

I grant the tenants a monetary order in the amount of \$2,250.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application is granted as they are awarded a monetary award in the amount of \$2,250 as noted above.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 26, 2021