



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 a security deposit and a pet damage deposit, and to recover the filing fee.

The Tenants submitted copies of pages 2, 3, and 6 of a tenancy agreement into evidence. The tenancy agreement was signed by the Landlord and the Tenants S.S. and N.S. but not by the Tenants K.S. and J.S. Therefore, pursuant to section 64 of the *Act*, I find it appropriate in the circumstances to remove the Tenants K.S. and J.S. as parties to this proceeding.

The Tenants submitted signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding and supporting documents by registered mail on May 3, 2021. The Tenants provided copies of Canada Post receipts containing the tracking number in support of service in this manner. Pursuant to sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on May 8, 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 and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee 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 pages 2, 3, and 6 of a residential tenancy agreement signed by the Tenants S.S. and N.S., indicating a monthly rent of \$2,200.00, a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00, for a tenancy commencing on April 1, 2020;
- Copies of two cheques payable to the Landlord dated February 28, 2020, each in the amount of \$1,100.00, for the security deposit and pet damage deposit;
- A copy of a type-written letter from the Tenants to the Landlord dated February 22, 2021 advising of their intention to move out on March 31, 2021 and providing a forwarding address in writing;
- A copy of a Proof of Service Tenant Notice of Forwarding Address for Return of Security and/or Pet Damage Deposit confirming service of the Tenants' forwarding address to the Landlord by registered mail on February 22, 2021, which service was supported by Canada Post Xpresspost receipts which included a tracking number and tracking information;
- A copy of a text message dated February 24, 2021 confirming receipt of the Tenants' letter advising of their intention to move out on March 31, 2021 by the Landlord; and
- A copy of a Tenant's Direct Request Worksheet dated April 19, 2021 confirming the amount of the security deposit and the pet damage deposit paid and that the tenancy ended on March 31, 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 \$1,100.00 and a pet damage deposit in the amount of \$1,100.00 as indicated in the tenancy agreement and supported by the Tenant's Direct Request Worksheet and copies of cheques date February 28, 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 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 March 31, 2021.

In accordance with sections 88 and 90 of the *Act*, I find it is more likely than not that the Landlord received the Tenants' forwarding address in writing on February 24, 2021, the date the Landlord acknowledged receipt of the Tenants' letter advising of their intention to move out on March 31, 2021 via text message.

I accept the evidence before me that the Landlord has failed to return the security deposit to the Tenants and did not file an Application for Dispute Resolution requesting to retain the security deposit by April 15, 2021, 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 and pet damage deposit in accordance sections 38(6) of the *Act*, which totals \$4,400.00 (\$2,200.00 x 2).

Having been successful I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Tenants are granted a monetary order in the amount of \$4,500.00 for the return of double the security deposit and the pet damage deposit and in recovery of the filing fee. The order must be served on the Landlord. The 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: May 21, 2021

Residential Tenancy Branch