



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNSD, FFT

Introduction

On August 10, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for damages, to apply the security deposit to the claim, and to be compensated for the filing fee.

On October 28, 2020, the Tenants submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the Act. The Tenants requested the return of the security deposit, and to be compensated for the cost of the filing fee. The Tenants’ Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call on November 30, 2020.

The parties attended the hearing on November 30, 2020 and provided testimony. The hearing was adjourned due to time constraints, and a reconvened hearing was scheduled for February 16, 2021.

The Tenants attended the reconvened hearing on February 16, 2021; however, the Landlord did not, and the original arbitrator dismissed the Landlord’s Application in its entirety, without leave to reapply. In his Decision, dated February 24, 2021, the original arbitrator awarded the Tenants an amount of compensation and ordered the return of the security deposit.

On March 3, 2021, the Landlord applied for a review consideration of the Decision, dated February 24, 2021, and as a result, a new hearing, specific to the Tenant’s Application, was ordered. The arbitrator that conducted the review consideration made it clear that the Landlord’s Application was not to be re-heard. The arbitrator confirmed that the Landlord’s Application had been dismissed for failure to attend the hearing on February 16, 2021, and that the Landlord’s Application for review on the basis of failure to attend was dismissed.

The Landlord, his agents and the Tenants attended today's hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter – Issues

As noted above, on October 28, 2020, the Tenants submitted an Application for Dispute Resolution requesting the return of the security deposit, and to be compensated for the cost of the filing fee. I clarified with the parties that these were the only issues that I would be considering at today's hearing. I confirmed that the Tenants have not made any applications for monetary compensation and that regardless of awards provided in the original Decision of February 24, 2021, I would be hearing only the issues of which the Tenants have applied.

I reviewed with the parties that the original Decision and related order, specific to the Tenants' Application, have been suspended by the arbitrator who considered the Landlord's review consideration application. This is documented in the Review Consideration Decision, dated March 5, 2021.

Issues to be Decided

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2019 and continued as a month-to-month tenancy. The monthly rent was \$2,250.00. The Landlord collected and still holds a security deposit in the amount of \$1,125.00. The Tenants moved out of the rental unit on July 31, 2020.

The Landlord submitted that a move-in inspection was conducted on May 1, 2019 and a written report was provided to the Tenants. The Landlord acknowledged that the report was not signed by the Tenants.

The Landlord testified that a move-out inspection was conducted on July 31, 2020 with Tenant E.L. The Tenant signed the move-out inspection report and provided a forwarding address in writing as noted in the submitted Condition Inspection Report.

The Landlord stated that there was damage to the rental unit noted on the move-out condition report. The Landlord acknowledged that the Tenants did not provide any written consent for the Landlord to withhold the security deposit. The Landlord testified that there was an oral agreement between the parties regarding the damage and that the Tenants agreed to wait until the Landlord had an opportunity to obtain further details about the damage in order to make a claim against the security deposit.

The Tenants testified that they conceded \$181.21 of the security deposit to compensate the Landlord for some damaged weather stripping, curtain rods and to repair two holes in the wall. The Tenants stated that there were no oral or written agreements with the Landlord to retain the security deposit.

The Tenants requested the return of the balance of the security deposit, in the amount of \$943.79.

Analysis

Section 38 of the Act states that the landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

I accept the Tenants' testimony and evidence that they requested the return of the security deposit and notified the Landlord of their forwarding address on July 31, 2020, as written on the move-out condition inspection report, in accordance with Sections 88 and 90 of the Act.

I accept that the Tenants have agreed to deduct \$181.21 from the security deposit as compensation for damages and are not claiming double the amount from the Landlord.

I accept the Landlord's testimony that he did not return the balance of the security deposit or reach a written agreement with the Tenants to keep some of the security deposit. I also accept that the Landlord made an Application for Dispute Resolution on August 10, 2020, to claim against the security deposit, pursuant to section 38 of the Act.

I note that the Landlord's Application for Dispute Resolution was dismissed without leave to reapply as documented in the original Decision, dated February 24, 2021. As a

result, I find no reason for the Landlord to continue to hold the security deposit. As such, I find that the Landlord must reimburse the Tenants the balance of the security deposit, as claimed by the Tenants, in the amount of \$943.79.00, pursuant to section 38 of the Act.

I find that the Tenants' Application has merit and that the Tenants are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Conclusion

In the Review Consideration Decision, dated March 5, 2021, the arbitrator ordered that the Decision, issued on February 24, 2021 and related to the Tenants' Application for Dispute Resolution, be suspended until a new hearing is completed.

As of this date, a new Review Hearing has been completed in relation to the Tenants' Application for Dispute Resolution, specific to their request for the return of the security deposit. As such, and pursuant to section 82(3) of the Act, I set aside the part of the Decision and order, dated February 24, 2021, that related to the Tenants' Application.

As a result of today's Review Hearing, the Tenants have been successful with their request to have the balance of the security deposit returned and to also be compensated for the filing fee. I grant the Tenants a Monetary Order for the amount of \$1,043.79, in accordance with sections 38 and 67 of the Act.

In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 01, 2021

Residential Tenancy Branch