



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter & ASSOCIATES PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On March 11, 2021, the Tenants submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Tenants requested the return of the security deposit, and to be compensated for the cost of the filing fee. The Tenants’ evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord’s Representatives (the “Landlords”), the Tenants and the Tenants’ Advocate attended the 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.

Preliminary Matter

The Tenants testified that they sent the Notice of Dispute Resolution Proceeding packages and the attached evidence to the Landlords, via registered mail, at the service address that was provided on the Tenancy Agreement, on April 12, 2021. The Tenants submitted the tracking numbers as noted on the face page of this Decision. The Tenants also stated that the packages were sent electronically to the Landlords’ email address; however, the Landlords did not respond.

The Landlords stated they did not receive the Notice of Dispute Resolution Proceedings package and only learned about the hearing as a result of an email from the Residential Tenancy Branch and then calling in to obtain further details.

According to the Canada Post website, it appears that notices were left at the Landlords’ address for service; however, the Landlords did not pick up the packages.

I find that the Tenants showed diligence in sending the Notice of Dispute Resolution Proceeding packages to the Landlords. I find that the Notice of Dispute Resolution

Proceeding packages, along with the attached evidence, have been sufficiently served for the purposes of this Act, on April 17, 2021, in accordance with section 71 of the Act.

When asked, the Landlords did not dispute this finding and stated that they were ready to proceed with the hearing.

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

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on March 1, 2019. The rent was \$2,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,100.00. The Tenants moved out of the rental unit on November 30, 2020.

The Tenants submitted a Proof of Service with a copy of a letter, dated January 27, 2021, that provided the Tenants' forwarding address and a request for the return of the security deposit. The Tenants testified that this letter was dropped off to the Landlords' place of business and also emailed to the Landlords' email address where correspondence regarding the tenancy regularly occurred.

The Tenants stated that they still have not received the security deposit from the Landlords.

The Landlords testified that they did not do a move-in inspection with the Tenants and only completed a move-out inspection a couple of weeks prior to the tenancy ending and did not complete a report.

Landlord ZR initially testified that the Landlords received the forwarding address from the Tenants a few weeks after the tenancy.

The Landlords confirmed that they did not return the security deposit to the Tenants; they did not apply for dispute resolution to claim against the security deposit; and the Landlords did not obtain written consent from the Tenants to keep the security deposit.

Towards the end of the hearing, Landlord ZR corrected herself and said that they did not receive the forwarding address from the Tenants until April 2021.

The Landlords acknowledged that they may not know the rules regarding the return of the security deposits, in accordance with the Act.

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.

Upon review of the Tenants' testimony and evidence, including the Proof of Service, I find that the Tenants requested their \$1,100.00 security deposit and notified the Landlords of their forwarding address on January 27, 2021, in accordance with sections 88 and 90 of the Act.

I accept the Landlords' testimony that they did not return the balance of the security deposit; did not receive a written agreement from the Tenants to keep the security deposit; and did not make an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlords must reimburse the Tenants double the amount of the outstanding security deposit for a total of \$2,200.00, 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

I grant the Tenants a Monetary Order for the amount of \$2,300.00, in accordance with section 67 of the Act. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, 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: August 25, 2021

Residential Tenancy Branch