



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-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 by the Tenants for a monetary order for the return of a security deposit and to recover the filing fee.

The Tenants submitted a signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that they served the Landlord with the Notice of Dispute Resolution Proceeding and supporting documents by registered mail on July 27, 2021, which service was witnessed by M.S. The Tenants also provided copies of Canada Post registered mail receipts which included the tracking number. Pursuant to sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on August 1, 2021, five days after they were mailed.

Issue to be Decided

1. Are the Tenants entitled to monetary compensation for the return of a security 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 a residential tenancy agreement signed by the parties on August 13, 2020, indicating a monthly rent of \$1,650.00 and a security deposit of \$825.00, for a tenancy commencing on September 1, 2020;
- A copy of a screen print of a bank statement indicating transfer of \$825.00 to the Landlord on August 14, 2020;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated June 15, 2021;
- 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 by registered mail on June 15, 2021, which service was supported by Canada Post registered mail receipts which included the tracking number; and
- A copy of a Tenant's Direct Request Worksheet dated June 19, 2021 indicating the amount of the security deposit paid (\$825.00), the portion of the security deposit returned to the Tenants (\$212.50), and that the tenancy ended on April 30, 2021.

Analysis

Section 38(1) of the *Act* states that the landlord has 15 days after the date the tenancy ends or the date they received the forwarding address in writing, whichever is later, 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 in full or make an application for dispute resolution claiming against the deposits within 15 days 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 \$825.00 as indicated in the tenancy agreement.

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 April 30, 2021.

In accordance with sections 88 and 90 of the *Act*, I find that the Landlord is deemed to have received the Tenants' forwarding address in writing on June 20, 2021, five days after it was sent to the Landlord by registered mail.

I accept the evidence before me that the Landlord has failed to return the security deposit to the Tenants and has not filed an Application for Dispute Resolution requesting to retain the security deposit by July 5, 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 in accordance sections 38(6) of the *Act*.

Policy Guideline #17 provides examples of different ways a security deposit may be doubled when an amount has been deducted. In this case, I find Example A is most like the current circumstances:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit (\$400 x 2 = \$800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 (\$800 - \$275 = \$525).

[Reproduced as written.]

Following the example provided in Policy Guideline #17, I find the Tenants are entitled to a monetary award for double the amount of the security deposit in the amount of \$1,437.50, which has been calculated as follows:

$$\mathbf{\$825.00 \times 2 = \$1,650.00}$$

$$\mathbf{\$1,650.00 - \$212.50 = \$1,437.50}$$

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

Conclusion

Pursuant to sections 38, 67, and 72 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,537.50 for the return of double the security 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: August 12, 2021

Residential Tenancy Branch