



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and gave affirmed testimony, explaining that the other tenant named in the application is the tenant's mother, who did not attend the hearing. The line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and evidentiary material in person on or about July 28, 2021. The application was filed on July 12, 2021 and the Notice of Dispute Resolution Proceeding was provided to the tenants by email on July 23, 2021. The tenants missed the email, and upon receiving it contacted the Residential Tenancy Branch and was advised to serve the documents as soon as possible. Both tenants were present when the landlord was served in person. The tenants re-served the required documents by email.

The tenant also called the landlord, who did not answer, but called the tenant back asking what the call was for, and the tenant advised that the documents had been served and had been re-served by email and to remind the landlord that the hearing was soon.

Considering the testimony of the tenant, I am satisfied that the landlord has been served and is well aware of today's hearing.

All evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically a filing fee from a previously scheduled hearing?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 15, 2021 and ended on April 1, 2021. There is no written tenancy agreement, however rent in the amount of \$900.00 was payable on the 1st day of each month. The tenants moved to the area from Edmonton, and prior to the move, paid the landlord a security deposit in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the e-transfer has been provided for this hearing. The rental unit is a basement suite, and the landlord resided in the upper level of the home.

When the tenants arrived, the condition of the rental unit was not as expected. There was food in the fridge, the rental unit was not cleaned and furniture suspected to belong to a previous tenant was still in the rental unit. The tenants cleaned, but advised the landlord that they would not be staying. The tenants paid rent for the time they remained in the rental unit but did not pay for the month of April, 2021. When the tenants asked for the security deposit back the landlord agreed that it would be returned in a few hours but kept putting it off. At a later date the landlord told the tenants to go ahead and complain, and that the landlord really didn't care.

The tenants provided the landlord with a forwarding address in a letter, sent by regular mail to the landlord, a copy of which has been provided for this hearing. It is dated March 9, 2021, however the tenant testified that her mother wrote the letter and dated it incorrectly.

People came to see the rental unit, so the tenant assumes it has been re-rented.

The landlord has not served the tenants with an Application for Dispute Resolution claiming against the security deposit.

The tenants claim \$450.00 for recovery of the security deposit; \$100.00 for recovery of the filing fee and an additional filing fee of \$100.00 for a previous hearing; the tenant missed the deadline and re-filed.

Analysis

The *Residential Tenancy Act* specifies that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit and/or pet damage deposit in full to a tenant, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s).

I have reviewed the letter dated March 9, 2021 and I accept the undisputed testimony of the tenant that it was written and sent on April 9, 2021 by regular mail to the landlord. Documents sent by regular mail are deemed to have been served 5 days later, or in this case April 14, 2021. The tenant testified that the landlord has not returned the security deposit to the tenants and has not served the tenants with an Application for Dispute Resolution claiming against the security deposit, and I have no such application before me. Therefore, I am satisfied that the tenants are entitled to double the amount, or \$900.00.

Since the tenants have been successful with this application, the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$1,000.00. The tenants must serve the order, and may file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

I do not believe that the landlord caused the tenants to suffer a loss for the first application made, and therefore, the tenants are not entitled to recover that filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

This order is final and binding and may be enforced.

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: January 21, 2022

Residential Tenancy Branch