



Dispute Resolution Services

Page: 1

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 filed by the Tenants for a monetary order for the return of a security deposit and to recover the filing fee.

The tenancy agreement submitted into evidence includes the name of only one of two landlords named in the application. Therefore, pursuant to section 64 of the Act, I amend the application to remove the name of the landlord who is not named on the tenancy agreement. Therefore, the Landlord is referred to in the singular throughout this decision.

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 evidence by registered mail on December 3, 2021. In support, the Tenants provided a copy of a Canada Post registered mail receipt confirming the date and time of service and including the tracking number. The Tenants also submitted a photograph of an envelope addressed to the Landlord bearing a Canada Post registered mail label. Pursuant to sections 89 and 90 of the Act, I find that the Landlord is deemed to have received these documents on December 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 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 signed residential tenancy agreement indicating a monthly rent of \$2,100.00 and a security deposit of \$1,050.00, for a tenancy commencing on May 1, 2020;
- A copy of a type-written letter to the Landlord dated October 21, 2021 requesting the return of the security deposit and providing a forwarding address;
- 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 attaching a copy to the Landlord's door on November 9, 2021, which service was witnessed by M.M.;
- A copy of a Tenant's Direct Request Worksheet dated November 8, 2021 confirming the amount of the security deposit paid (\$1,000.00), referring to "rent compensation" in the amount of \$2,100.00, and that the Tenants vacated the rental unit on November 1, 2021; and
- A receipt dated April 23, 2020 for a cash payment of \$1,000.00.

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, despite what is stated in the tenancy agreement, the Tenants paid a security deposit in the amount of \$1,000.00 as indicated in the Tenant's Direct Request Worksheet, on the payment receipt dated April 23, 2020, and as requested in the Tenants' application.

Further, 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 they vacated the rental unit on November 1, 2021.

In accordance with sections 88 and 90 of the Act, I find that the Landlord received the Tenants' forwarding address in writing on November 12, 2021, three days after a copy was attached to the Landlord's door.

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 November 27, 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 paid in accordance section 38(6) of the Act, which totals \$2,000.00 ($\$1,000.00 \times 2 = \$2,000.00$).

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

I make no findings with respect to "rent compensation" as referenced on the Tenant's Direct Request Worksheet.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act, I grant the Tenants a monetary order in the amount of \$2,100.00 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: January 10, 2022

Residential Tenancy Branch