



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for return of part or all of the security deposit pursuant to Sections 38 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, SD and CD, and the Tenants, LFC and LFD, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants testified that they served the Landlords with the Notice of Dispute Resolution Proceeding package for this hearing on January 10, 2022 by Canada Post registered mail to the address on the tenancy agreement (the "NoDRP package"). The Tenants referred me to the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. Canada Post reports that both packages were delivered on January 12, 2022. The Landlords said they moved from the address on the tenancy agreement, but Landlord SD testified that they had mail

forwarding. I find that the Landlords were sufficiently served with the NoDRP package on January 12, 2022 in accordance with Sections 71(2)(b) and 89(1)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for return of part or all of their security deposit?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on March 1, 2020. The fixed term was to end on March 1, 2021, then the tenancy would continue on a month-to-month basis. Monthly rent was \$2,500.00 payable on the first day of each month. A security deposit of \$5,000.00 was collected at the start of the tenancy contrary to Section 19(1) of the Act. The Landlords testified that the \$5,000.00 was for first and last month's rent.

The rental property consists of a basement suite and an upstairs unit. On July 9, 2020, the downstairs tenants gave notice that they would be moving out due to a relationship breakdown. One Tenant who lived downstairs was named on the tenancy agreement, but the Tenants, in this matter, did not include him as part of their party in their application. The downstairs Tenants completely moved out at the end of August 2020. The Landlords re-negotiated with the remaining Tenants for just the upstairs unit. The upstairs Tenants moved out of the upstairs rental unit on June 1, 2021.

The Tenants said they sent their forwarding address to the Landlords by email on June 23, 2021. The Tenants also stated they served the Landlord with #RTB-47, Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit, on October 15, 2021 by email, and by substitution service. The Tenants have not been ordered by an Arbitrator that substitution service by email is allowed to them.

The Landlords said they “*never received a formal written notice*” of the Tenants’ forwarding address. The only way the Landlords learned of the Tenants’ new address

was after they received the NoDRP package for this hearing. The Landlords stated they never authorized the Tenants to use their email address for service of legal documents; however, the Landlords and Tenants did use email to communicate to each other.

The Landlords testified that they did do a condition inspection of the rental unit prior to the Tenants' occupation. The Tenants testified that they did not sign a condition inspection report at the beginning of the tenancy.

The Landlords did not do a condition inspection at the end of the tenancy with the Tenants. The Tenants did not provide written permission to the Landlords to withhold their security deposit.

The Landlords said the Tenant who lived downstairs, but was not named as a party in this application, was the person who paid the security deposit to the Landlords in two \$2,500.00 payments. The Landlords said there was damage done to the unit by the upstairs' Tenant's son, and the lease was broken in the early part of the tenancy, these are the reasons the security deposit was not paid back to the Tenants.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Tenants are seeking the return of their security deposit. Section 38(1) of the Act states that within 15 days after the later of

- (a) *the date the tenancy ends, and*
 - (b) *the date the landlord receives the tenant's forwarding address in writing,*
- the landlord must do one of the following:*
- (c) *repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) *make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

The Tenants testified they moved out of the rental unit on June 1, 2021. I find that the end of this tenancy was June 1, 2021. The Tenants testified that they sent their forwarding address to the Landlords by email on June 23, 2021 and again on October 15, 2021 on an #RTB-47 form. The Tenants did not include in their documentary evidence these emails they stated they sent to the Landlords with their forwarding address. I do find that the Tenants and the Landlords communicated information to each other by email; however, I find the Tenants have not proven on a balance of probabilities that their forwarding address was sent to the Landlords by email. The Tenants application in this matter is dismissed with leave to re-apply.

For the Tenants benefit, Section 39 of the Act states, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) *the landlord may keep the security deposit or the pet damage deposit, or both, and*
- (b) *the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. (emphasis mine)*

Either party may want to discuss with an Information Officer at the RTB any questions they may have in this matter. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenants' application for return of their security deposit is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 10, 2022

Residential Tenancy Branch