



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDB-DR FFT

Introduction

The tenants seek the return of their security and pet damage deposits pursuant to section 38 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the cost of the application filing fee pursuant to section 72 of the Act.

The tenants initially made an application by way of direct request proceeding on October 5, 2021. The reviewing adjudicator found discrepancies in the information provided by the tenants and ordered that their application be heard at a participatory hearing (see Interim Decision dated November 8, 2021.) These discrepancies were resolved at the hearing on April 1, 2022.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

One of the tenants attended the hearing but the respondents did not. When a respondent does not attend, I must be satisfied that they were served with the Notice of Dispute Resolution Proceeding in compliance with the Act and the *Rules of Procedure*.

The tenant testified under oath that they served the Interim Decision, the Notice of Dispute Resolution Proceeding, and their evidence by registered mail, which is a permitted method of service under section 89 of the Act. The tenant gave evidence that they served the landlords in mid- to late November 2021.

Given the undisputed, sworn evidence before me, it is my finding that the landlords were appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings.

It should be noted that the landlords include both the corporate entity listed on the written tenancy agreement and the individual who represented himself to the tenants as their landlord. As such, both parties are listed as respondents in this application and the style of cause is amended to reflect the named parties.

Issues

1. Are the tenants entitled to the return of their security and pet damage deposits?
2. Are the tenants entitled to recover the cost their application filing fee?

Background and Evidence

The tenancy began on June 1, 2021 and ended on August 25, 2021 when they vacated the rental unit. (The tenants paid rent for September 2021.) The tenancy agreement, which is in evidence, and which was signed by the parties on May 31, 2021, indicated that the tenancy was a fixed-term tenancy was to end on November 30, 2021.

Monthly rent was \$1,100.00. The tenants paid a \$550.00 security deposit, and they paid a \$550.00 pet damage deposit. To date, the landlords have not returned either deposit to the tenants. At no point did the tenants give written authorization for the landlords to retain the deposits.

The tenants gave evidence that they provided their forwarding address by hand and in writing, to the landlord (K.G.) on September 3, 2021. A copy of the *Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit* along with a proof of service document were admitted into evidence. Last, it is worth noting that the landlords did not complete a condition inspection report at either at the start of, or at the end of the tenancy.

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.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), 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 landlords received the tenants' forwarding address on September 3, 2021. The landlords neither repaid any of the tenants' deposits nor did they make an application for dispute resolution claiming against those deposits. Nor did the landlords obtain any written permission from the tenants to retain the deposits.

In summary, the landlords had no legal right to keep the security and pet damage deposits and must therefore repay the deposits, subject to the doubling provision as set out below.

Next, regardless of whether an applicant tenant requests it, I must apply section 38(6) of the Act which states the following:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, it is my finding that the landlords did not comply with subsection 38(1) of the Act and must therefore pay the tenants double the amount of the deposits, for a total of \$2,200.00.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, they are therefore granted an additional \$100.00 to pay for the application filing fee.

In total, the tenants are awarded \$2,300.00. Pursuant to sections 67 and 72 of the Act the landlords are hereby ordered to pay this amount to the tenants within 15 days of receiving a copy of this decision.

The tenants are granted a monetary order, which must be served on the landlords. If the landlords fail to pay the tenants the amount owed then the tenants are at liberty to file and enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 1, 2022

Residential Tenancy Branch