



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 22, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlords return the security deposit and/or pet damage deposit;
- an order granting compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- an order granting recovery of the filing fee.

The Tenant JKA and the Landlord GM attended the hearing and provided affirmed testimony.

On behalf of the Tenants, JKA testified that the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail. GM acknowledged receipt.

On behalf of the Landlords, GM testified the documentary evidence upon which they intended to rely was served on the Tenants by registered mail. JKA acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to the return of a security deposit?
2. Are the Tenants entitled to compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on February 1, 2021, and ended on December 31, 2021, at which time the Tenants vacated the rental unit. At all material times, rent of \$1,000.00 per month was due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$500.00, which the Landlords hold. A partial copy of the signed tenancy agreement was submitted into evidence.

During the hearing, JKA testified that the Tenants provided the Landlords with a forwarding address in writing. A copy of a letter providing a forwarding address was submitted into evidence. JKA testified the letter was served on the Landlords by registered mail on December 31, 2021. A copy of Canada Post tracking information was submitted in support. GM acknowledged receipt of the Tenants' forwarding address letter but could not recall the precise date.

The parties also agreed that a move-in condition inspection was not completed. GM testified that he tried to do a move-out condition inspection to discuss damage but that the Tenants would not attend. JKA testified she could not attend because of her father's surgery.

GM testified that the security deposit has been retained because of damage to the rental unit, primarily to the floor. JKA denied the floor was damaged and disagreed with the alleged repair cost.

In addition, JKA testified that the Landlords did not issue a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved form. JKA testified that notice was initially verbal and was subsequently reduced to writing in communications between the parties.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

I find the Tenants served a forwarding address on the Landlords by registered mail on December 31, 2021. GM was unable to remember when it was received. However, pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received five days later. I find the Landlords are deemed to have received the forwarding address letter on January 5, 2022. Therefore, I find the Landlords had until January 20, 2022, to either repay the security deposit or make an application to keep it by filing an application for dispute resolution. There is insufficient evidence before me that the Landlords did either.

As a result, pursuant to section 38(6) of the Act, I find the Tenants have established an entitlement to recover double the amount of the security deposit, or \$1,000.00 (\$500.00 x 2).

With respect to the Tenants' claim for compensation, section 51(2) of the Act provides for compensation of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose was accomplished within a reasonable period after the effective date of the notice, and the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. A notice to end tenancy in the approved form provides the foundation for a claim for compensation under this section. Indeed, section 52 of the Act requires that all notices to end tenancy issued by a landlord must be in the approved form.

As noted above, JKA confirmed during the hearing that the Tenants did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved form. Instead, notice to the Tenants was initially verbal and subsequently reduced to writing in communications between the parties. As a result, I find the Tenants were not served with a valid notice to end tenancy and are not entitled to compensation under section 51(2) of the Act. The aspect of the Tenant's application is dismissed without leave to reapply.

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

Conclusion

The Tenants are granted a monetary order in the amount of \$1,100.00 in recovery of double the security deposit and in recovery of the filing fee. The order must be served on the Landlords. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' request for compensation under section 51(2) of the Act is dismissed without leave to reapply.

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: May 24, 2022

Residential Tenancy Branch