



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFL

Introduction

This hearing was convened as a follow-up to the Tenants' Application for Dispute Resolution by Direct Request, made on October 13, 2021, pursuant to section 38.1 of the Residential Tenancy Act (the Act). The Tenants applied for the following relief:

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

In a decision issued on December 8, 2021, an adjudicator adjourned the matter to a participatory hearing, scheduled on May 17, 2022, at 1:30 p.m.

The Tenants and the Landlord attended the participatory hearing and provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail on December 10, 2021. The Landlord acknowledged receipt. As the Landlord acknowledged receipt and did not raise any issues with service or receipt of these documents during the hearing, I find they were sufficiently served for the purposes of the Act, pursuant to section 71 of the Act.

The Landlord submitted documentary evidence in response to the Tenant's application. However, the Landlord testified it was served on the Tenant by email and regular mail in December 2020 but was not served on the Tenants in relation to this proceeding. The Tenants testified they did not receive documents from the Landlord. I find the Landlord's evidence was not served on the Tenants in accordance with the Act and the Rules of Procedure. As a result, it has not been considered further in this decision.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings. All in attendance confirmed they were not recording the hearing.

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. 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 recover the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants testified that they signed a tenancy agreement with the Landlord on November 2, 2018, but never received a copy. However, the parties agreed the tenancy began on November 1, 2018, and ended on or about November 27, 2020. The parties also agreed that rent was \$1,435.00 per month during the tenancy, and that the Tenants paid a security deposit of \$700.00. The Landlord confirmed the security deposit has not been returned to the Tenants.

The Tenants testified they sent the Landlord a forwarding address in writing on May 28, 2021. In support, the Tenants submitted a copy of a letter to the Landlord dated May 28, 2021. The letter contains the Tenants' forwarding address. The Tenants testified the letter was sent to the Landlord via registered mail on May 28, 2021. A Canada Post registered mail receipt and tracking information was submitted in support, and the Landlord acknowledged receipt.

The Landlord testified the parties did a "walk through" when the Tenants moved in but does not believe move-in or move-out condition inspection reports were completed.

In reply, the Landlord merely testified that the rental unit was not in the same condition as when the Tenants moved it. The Landlord testified that he had to perform repairs and clean the rental unit at the end of the tenancy.

Analysis

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

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.

In this case, I find the Tenants provided the Landlord with a forwarding address by registered mail on May 28, 2020. 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 Tenant's forwarding address is deemed to have been received by the Landlord on June 2, 2020. As a result, I find the Landlord had until June 17, 2020, to repay the deposit to the Tenants or file an application for dispute resolution. I am satisfied the Landlord did neither.

Considering the above, I find that the Tenants are entitled to recover double the amount of the security deposit, or \$1,400.00 (\$700.00 x 2), pursuant to section 38(6) of the act.

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

The Tenants are granted a monetary order of \$1,500.00 (\$1,400.00 + \$100.00).

Conclusion

The Tennant is granted a monetary order in the amount of \$1,500.00. 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: May 17, 2022

Residential Tenancy Branch