



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by Direct Request made on October 11, 2022, pursuant to section 38.1 of the Residential Tenancy Act (the Act). In an Interim Decision dated November 29, 2022, an adjudicator adjourned the matter to a participatory hearing.

The Tenants apply for the following relief, pursuant to the Act:

- a monetary order for the return of the security and pet damage deposits; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing. The Landlord was represented at the hearing by JD, his daughter. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, BP testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on December 2, 2022. JD acknowledged receipt. Canada Post registered mail receipts including the date and time of purchase and the tracking number were submitted in support. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days after they are mailed. I find these documents are deemed to have been received by the Landlord on December 7, 2022.

On behalf of the Landlord, JD testified that the evidence submitted to the Residential Tenancy Branch Dispute Management System was not served on the Tenants. Rule of Procedure 3.15 confirms that a respondent must ensure evidence to be relied upon is served on the applicant not less than seven days before the hearing. As the Landlord

has not served any evidence on the Tenants in accordance with the Act and Rule of Procedure 3.15, I find that the documents submitted by the Landlord are excluded from consideration.

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 the security and pet damage deposits?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on December 1, 2021 and that the Tenants vacated the rental unit on May 31, 2022. The parties agreed the Tenants paid a security deposit of \$2,000.00 and pet damage deposit of \$100.00. A screen print of a bank statement confirms payment of \$2,100.00 on October 15, 2021. Although BP testified that a further pet damage deposit of \$100.00 was paid, he stated there was no proof of the payment and JD disputed the additional amount. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Tenants, BP testified that the Landlord was provided with a forwarding address on a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated September 1, 2022 (the Tenant Notice). BP testified the Tenant Notice was served on the Landlord by registered mail on September 2, 2022. A copy of a Canada Post registered mail receipt and a Proof of Service document were submitted in support. JD acknowledged receipt of the Tenants' forwarding address on behalf of the Landlord.

BP testified that the Landlord returned \$1,200.00 to the Tenants in October 2022, but did not return the pet damage deposit. That is, the Landlord continues to hold \$900.00 (\$800.00 + \$100.00) without the Tenants' consent.

On behalf of the Landlord, JD acknowledged that only \$1,200.00 was returned to the Tenants. She testified that the remainder was retained by the Landlord due to damage, primarily to a custom window. BP testified that a crack in the window was a “thermal crack” and was not caused by the actions of the Tenants.

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. The condition of the rental unit at the end of the tenancy is not a relevant consideration.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing by registered mail on September 2, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to have been received five days later. Therefore, I find the Tenants’ forwarding address – receipt of which was acknowledged by JD – is deemed to have been received on September 7, 2022. As a result, I find the Landlord had until September 22, 2022 to either repay the deposits to the Tenants or make a claim against them by filing an application for dispute resolution.

I find the Landlord did not repay the deposits to the Tenants in full or make a claim against them by filing an application for dispute resolution. Rather, the Landlord retained \$900.00 on account of damage to the rental unit. Therefore, pursuant to section 38 of the Act, I find the Tenants are entitled to double the amount of the deposits held.

Policy Guideline #17 provides example to help calculate the amount due to the Tenants. In this case, I find that Example A is most like the current circumstances:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant’s written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit (\$400 x 2 = \$800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 (\$800 - \$275 = \$525).

I find the Tenants are entitled to a monetary award of \$3,000.00, which has been calculated in accordance with Policy Guideline #17 as follows:

$$\text{\textbf{\$2,100.00 x 2 = \$4,200.00}}$$

$$\text{\textbf{\$4,200.00 - \$1,200.00 = \$3,000.00}}$$

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

Considering the above, I find the Tenants have established an entitlement to a monetary order for \$3,100.00, which is comprised of \$3,000.00 for double the amount of the deposits held and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$3,100.00. 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 31, 2023

Residential Tenancy Branch