



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Pacific Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

In this application for dispute resolution, the tenants applied on May 26, 2022 for:

- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Are the tenants entitled to a monetary order for the return of the security deposit?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began September 1, 2020 and ended April 30, 2022, rent was \$2,555.00 at the end of the tenancy and was due on the first of the month, and the tenants paid a security deposit of \$1,260.00.

The landlord testified the security deposit has been returned to the tenants.

The tenants testified that they received an e-transfer for \$1,272.00 from the landlord on May 17, 2022. The tenants testified they did not accept the e-transfer because it was for less than they had anticipated. The tenants testified that as they had agreed to sell the landlord's representative a few items and there was an unauthorized deduction for a "COVID cleaning fee," the \$1,272.00 they received from the landlord was not the amount the parties had agreed on.

Submitted as evidence is an email from the landlord to the tenant, stating that the e-transfer was sent on May 17, 2022.

The tenants testified they later received a cheque for \$1,272.00 by registered mail from the landlord, but did not cash it.

Submitted as evidence is a "deposit calculation" sent by the landlord to the tenants, noting that the tenants paid a security deposit of \$1,260.00, that the landlord was paying the tenants for some furniture items, and had made a deduction for cleaning.

The parties agreed that a move-in inspection was done and a copy of the report was given to the tenants. The tenants said they were not given two opportunities by the landlord's representative to participate in a move-out inspection, and were not given a copy of a move-out inspection report. The landlord testified that two opportunities are usually provided, but that in this case they did not have a record of those having been provided to the tenants.

The tenants testified they provided their forwarding address by email on April 27, 2022, and by registered mail on April 29 and September 9, 2022, and provided tracking numbers as noted on the cover page of the decision. The landlord testified they did not receive a forwarding address, but could see from the tenants' evidence that it was received by the landlord's representative on May 13, 2022.

Submitted as evidence by the landlord is an email from the tenant to the landlord, dated April 27, 2022, in which the tenant provides the landlord with their forwarding address.

The RTB-51 *Address for Service* form is not submitted as evidence, to document that the parties had agreed to service by email.

The evidence submitted by the tenants demonstrates that they frequently corresponded back and forth with the landlord's representative by text message.

In an April 30, 2022 text message from the tenant to the landlord's representative, the tenant wrote: "You have already received our forwarding address by email at [landlord's business email]," and the landlord's representative responded to the text on the same day.

Analysis

Section 38(1) states:

38(1) 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.

Section 38(6) states:

- (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.

The tenants testified they provided their forwarding address by email on April 27, 2022 and a copy of the email is in evidence, but there is no evidence before me the parties had agreed to service by email. However, there is documentary evidence demonstrating that the parties communicated extensively by text message. Considering the tenant's April 30, 2022 text message to the landlord, in which the tenant told the landlord the tenant provided their forwarding address by email, and the landlord replied the same day, I find that had the landlord not previously been aware of the email, the tenant's text would have notified the landlord that the tenant had provided their forwarding address in writing. Therefore, I find the tenant provided their forwarding address to the landlord on April 30, 2022, the date the tenancy ended, and that the landlord received it that day.

As the parties agreed the landlord sent the tenants an e-transfer for \$1,272.00 on May 17, 2022, which the tenants did not accept, and the landlord later sent a cheque for \$1,272.00 by registered mail, which the tenants did not cash, I find the landlord repaid the tenants' security deposit of \$1,260.00.

As the landlord did not repay or made a claim against the deposit within 15 days of April 30, 2022, the date they received the tenants' forwarding address and the date the tenancy ended, I find the landlord is required to pay the tenant double the amount of the security deposit, for a total of \$2,520.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

As the landlord has returned \$1,272.00 to the tenants, I find the tenants entitled to a monetary order as follows:

Double the security deposit	2,520.00
Amount returned to tenants	-1,272.00
Filing fee	100.00
Owed to tenants	\$1,348.00

I find the agreement between the landlord and the tenants for purchase of some of the tenants' possessions is not one contemplated by the Act, and therefore I have not considered it.

Conclusion

The tenants are granted a monetary order in the amount of \$1,348.00. The monetary order must be served on the landlord. The monetary 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: March 06, 2023

Residential Tenancy Branch