



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord AB appeared with witness RB. Tenants BM and DM appeared for themselves. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for the return of security or pet deposits?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced June 1, 2021. Rent was \$3,654.00 per month due on the first of the month. The landlord still holds a security deposit of \$1,800.00 in trust for the tenants. The tenancy ended October 31, 2022.

It is not in dispute that the landlord and tenants did not do a move in inspection and complete a move in condition inspection report. The landlord and tenants also did not complete a move out inspection or prepare a move out condition inspection report.

The tenants testified that they provided their forwarding address by email to the landlord on October 31, 2022. The email was provided in evidence. The tenants testified that they did not agree to the landlord retaining all or a portion of their security deposit. The landlord did not provide any evidence that the tenants agreed in writing to the landlord retaining all or a portion of the security deposit.

Analysis

RTB Rules of Procedure 6.6 states, "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.

There is no evidence before me that the tenants extinguished their rights to the return of their security deposit either under section 24 or section 36 of the Act. There is no evidence before me of an agreement by the tenants to allow the landlord to retain all or a portion of the security deposit. The undisputed evidence of the tenants is that they provided the landlord with their forwarding address by email dated October 31, 2022. Based on section 38 of the Act, the landlord had until November 15, 2022 to either return the security deposit or file a claim for dispute resolution. The landlord did neither.

Section 38(6) of the Act states that if the landlord has not returned the security deposit or filed an application for dispute resolution within 15 days, the amount of the security deposit will be doubled. I find that the tenants have satisfied their onus to establish that they are entitled to the return of double the amount of their security deposit.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenants are granted a monetary order for \$3,700.00 in recovery of the security deposit and filing fee. 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: April 23, 2023

Residential Tenancy Branch