



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDS-DR, 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 requiring the landlord to return the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord did not attend the hearing. Tenant DD appeared. 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 tenants testified that they served the dispute notice on the landlord by registered mail on December 9, 2022. The tenants provided a receipt and a Canada Post tracking number and tracking information in evidence as proof of service. I find that the landlord is deemed served with the dispute notice on December 14, 2022, based on sections 89 and 90 of the Act.

The tenants further testified that they served the landlord with their evidence by registered mail on November 4, 2022, however, they did not provide proof of service in evidence. I will not consider the tenants’ documentary evidence as they have not established that they served the landlord. However, I will consider the evidence of the tenants’ forwarding address, which was provided to the landlord on August 19, 2022 by registered mail. The tenants provided proof of service of the forwarding address in

evidence on RTB Form 41 Proof of Service. I find that the landlord was served with the forwarding address on August 24, 2022 pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to an order for return of the security deposit?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on October 1, 2019, on a month-to-month basis. Rent was \$2,500.00 per month due on the first of the month. The landlord still holds a security deposit of \$1,250.00 in trust for the tenants. The tenancy ended July 31, 2022.

The tenants testified that no move in inspection was completed upon the tenants taking possession of the rental unit, nor was a move out inspection completed at the end of the tenancy. The tenants testified that they provided the landlord with their forwarding address by registered mail on August 19, 2022. The tenants did not agree in writing to the landlord retaining all or part of the security deposit. The tenants stated that the landlord has not returned their 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.

Section 38(1) of the Act states that unless the tenants agree in writing to allow the landlord to retain all or part of the security deposit, the landlord must do one of two things within 15 days of receiving the tenants' forwarding address. The landlord must either return the entire security deposit or file a claim with the RTB to keep the security deposit. I find that the landlord did neither of these things.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord is required to return double the amount of the security deposit to the tenants. I find that the tenants have satisfied their onus to establish that the landlord

did not comply with section 38(1) of the Act and therefore the tenants are entitled to the compensation of \$2,500.00 which is double the amount of their security deposit.

As the tenants are 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 in the amount of \$2,600.00 for their security deposit and the 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: May 01, 2023

Residential Tenancy Branch