



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERLOCK ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on September 6, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?

2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on October 1, 2020. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,335.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$650.00. The tenancy ended on June 30, 2022.

The parties testified and agreed that they conducted a move out inspection of the rental unit on June 30, 2022. The parties agreed that the Tenants provided their forwarding address in writing on the condition inspection report on June 30, 2022. The Landlord confirmed receipt on the same date.

The parties agreed that the condition inspection report notes one deduction to the Tenants' security deposit for carpet cleaning in the amount of \$152.25. The Tenant stated that their friend, who was also moving out of the same rental property signed the Tenants' condition inspection report acknowledging the deductions by mistake.

The Landlord's agent stated that three walls in the rental unit needed to be repainted. The Landlord's Agent did not know the cost of painting at the time of the move out inspection. The Landlord's Agent stated that the painting was later completed at a cost of \$430.00. As such, the Landlord sent the Tenants a cheque in the amount of \$67.75 which is the remaining balance of the Tenants' security deposit, less the above mentioning deductions.

The Tenant stated that they do not agree that the rental unit required carpet cleaning or painting. The Tenant stated that they did not consent to the Landlord retaining any amount of their security deposit. The Tenant confirmed that they have received a cheque from the Landlord in the amount of \$67.75, however, they have not yet cashed the cheque.

If successful, the Tenants are seeking the return of the \$100.00 filing fee.

Analysis

Based on the documentary evidence before me for consideration 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 a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on June 30, 2022 and provided the Landlord with their forwarding address in writing on the same date. The Landlord confirmed receipt of the Tenants' forwarding address on June 30, 2022.

I find that the condition inspection report indicates that either the Tenants or their representative signed the condition inspection report consenting to the Landlord retaining \$152.25 from the Tenants' \$650.00 security deposit. As such, I find that the Landlord was within their right to retain this amount.

I accept that the Landlord returned \$67.75 of the Tenants' security deposit by cheque. The Tenants are at liberty to cash the cheque they received from the Landlord.

With respect to the remaining portion of the Tenants' security deposit in the amount of \$430.00, I find that there is no evidence before me that the Landlord was entitled to retain this portion of the security deposit under sections 38(3) or 38(4) of the *Act*. I find pursuant to section 38(1) of the *Act*, that the Landlord had until July 15, 2022 to repay the remaining deposit in the amount of \$430.00 to the Tenants, or make an application for dispute resolution if the Landlord felt entitled to retaining this portion for painting costs, since the Tenants did not provide the Landlord with consent to retain this amount. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the remaining portion of the security deposit ($\$430.00 \times 2 = \textbf{\$860.00}$).

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

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$960.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$960.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: June 2, 2023

Residential Tenancy Branch