



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by Direct Request made on December 19, 2022, pursuant to section 38.1 of the Residential Tenancy Act (the Act). In an Interim Decision dated March 24, 2023, the matter was adjourned to a participatory hearing, which was scheduled on September 1, 2023.

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

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

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of these documents. Therefore, pursuant to section 71 of the Act, I find these documents are sufficiently served for the purposes of the Act.

The Landlord acknowledged that the documentary evidence submitted to the Residential Tenancy Branch Dispute Management System was not served on the Tenants. Therefore, the Landlord's documentary evidence has not been considered in reaching a decision.

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 a security deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on May 13, 2022. However, the parties differed with respect to when the tenancy ended. The Tenants testified the tenancy ended on July 31, 2022, pursuant to a mutual agreement. The Landlord denied a mutual agreement and testified the Tenants should have given one month's notice in July 2022 for the tenancy to end on August 31, 2022. During the tenancy, rent of \$3,000.00 per month was due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$1,500.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Tenants testified that the Landlord was given a forwarding address in writing by email on January 26, 2023. A copy of a Tenant's Notice of Forwarding Address and a Proof of Service document dated January 26, 2023, confirming service of the Tenants' forwarding address on that date, was submitted into evidence. The Landlord confirmed he received the Tenant's forwarding address by email.

The parties agreed that the Landlord continues to hold the security deposit. The Landlord testified he has held the security deposit because the Tenants did not give sufficient notice to end the tenancy. As noted above, the Landlord testified he did not agree to end the tenancy by mutual agreement on July 31, 2022, and assumed he would receive payment when due on August 1, 2022. The Landlord testified the Tenants did not return the keys until August 6, 2022.

In reply, the Tenants testified that the Landlord agreed to break the tenancy agreement if they could find a location. JB read an excerpt from an email exchange in which the Landlord appears to initially agree to end the tenancy on July 31, 2022 but then states that one month's notice was necessary.

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, and the merits of any potential claim against a tenant is not a valid consideration.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing by email on January 26, 2023. The Landlord acknowledged receipt of the Tenants' forwarding address by email. Pursuant to sections 88 and 90 of the Act, I find the Tenants' forwarding address is deemed to have been received by the Landlord on January 29, 2023, three days after it was sent. Therefore, I find the Landlord had until February 13, 2023, to either repay the security deposit to the Tenants or to make a claim against it by filing an application for dispute resolution.

Considering the above, I find the Landlord did not repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. Therefore, pursuant to section 38(6) of the Act, I find the Tenants are entitled to double the amount of the security deposit held, which is \$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.

Conclusion

The Tenants are granted a monetary order for \$3,100.00. 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: September 1, 2023

Residential Tenancy Branch