



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNRL-S, MNDL-S, LRSD, FFL
 TT: MNSDS-DR, FFT

Introduction

The Landlords have submitted two repeated Applications for Dispute Resolution. The first was made on July 1, 2024, followed by a second Application containing the same claims on August 8, 2024 (the “Landlords’ Applications”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on July 2, 2024, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

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

The Landlords’ Counsel A.A. and the Tenant N.F. attended the hearing at the appointed date and time. At the outset of the hearing, the Landlords’ counsel requested to withdraw the Landlords’ Applications. The Landlords’ Applications were withdrawn accordingly. The hearing proceeding based on the Tenants’ Application.

The Landlord’s Counsel confirmed receipt of the Tenants’ Application and evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act. The Landlords’ Counsel confirmed that the Landlords did not submit any evidence in response to the Tenants’ Application.

Issue(s) to be Decided

1. Are the Tenants entitled to an order granting the return 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 terms of the tenancy; the tenancy began on September 15, 2022. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$5,916.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$2,900.00. The tenancy ended on May 15, 2024.

The Tenants are seeking the return of double their security deposit as the Landlords have not yet returned the Tenants' deposit in its entirety.

The parties confirmed that the Tenants sent their forwarding address in writing to the Landlords by Registered Mail on June 7, 2024. The Landlords' Counsel confirmed receipt on or about that date. The parties agreed that the Landlords sent the Tenants an e-transfer in the amount of \$900.00. The Tenant stated that they did not accept the transfer as they did not agree with the Landlord retaining the remaining \$2,000.00. The Landlord's Counsel stated that they were unable to confirm if the e-transfer in the amount of \$900.00 was accepted by the Tenants.

The Tenant stated that they have not consented to the Landlords retaining any portion of their security deposit. Furthermore, the Tenant stated that the Landlords have not returned the deposit within 15 days. As such, the Tenants are seeking the return of double their deposits along with the filing fee.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

With respect to the Tenants' claim for the recovery of double their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making 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. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

I accept that the parties agreed that the Tenants provided the Landlords with their forwarding address in writing by Registered Mail on June 7, 2024. Pursuant to Section 90 of the *Act*, the Landlords are deemed served five days later, on June 12, 2024, which is after the end of tenancy date of May 15, 2024. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until June 27, 2024 to repay the deposit or make a claim against it.

I accept that the parties agreed that the Landlord e-transferred \$900.00 to the Tenants which the Tenant confirmed was received on June 12, 2024. I find that the Landlords were not entitled to retain the remaining \$2,000.00 as the Tenants did not consent to them doing so, and the Landlords have not submitted an Application to retain the Tenant's deposits before June 27, 2024. As such, I find that the Landlords have breached Section 38 of the *Act*.

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 security deposit that was not received by the Tenants ($\$2,000.00 \times 2 = \textbf{\$4,000.00}$).

I accept that the Landlords had sent the Tenants an e-transfer in the amount of \$900.00. The Tenant stated that they did not accept the e-transfer. The Landlord's Counsel stated that he was unable to confirm the status of the deposit. As such, I find that the Tenant is entitled to the **\$900.00**, however, I decline to double this amount as it was returned but not accepted by the Tenants within the 15 day time limit, but not accepted by the Tenants.

I find the Tenants' security deposit of \$2,900.00 has accrued interest from the date it was paid until June 12, 2024 in the amount of \$92.35. I find that the remaining \$2,000.00 held by the Landlords from June 13, 2024 to the date of the hearing has accrued another \$14.16 in interest. Therefore, I award the Tenants ($\$92.35 + \$14.16 = \textbf{\$106.51}$) in interest.

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 \$5,106.51.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$5,106.51. 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: September 16, 2024

Residential Tenancy Branch