



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated May 26, 2017 (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 or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by N.B. The Landlord was represented at the hearing by R.F. and L.F., his spouse and daughter, respectively. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, N.B. testified that the Application package was served on the Landlord by registered mail on June 2, 2017. A proof of delivery document submitted with the Tenants' documentary evidence confirmed the Application package was received on June 5, 2017. I find the Landlord received the Application package on June 5, 2017.

The Landlord submitted a documentary evidence package in response to the Tenants' Application. It was received at the Residential Tenancy Branch by fax on November 3, 2017. The documents were received at the Residential Tenancy Branch late, contrary to Rule of Procedure 3.15. Further, on behalf of the Landlord, L.F. advised that the documentary evidence was not served on the Tenants. Accordingly, the documentary evidence submitted by the Landlord has not been considered in this Decision. I also note the evidence appeared to suggest the Tenants caused damage in the rental unit, which was not an issue in the hearing and would not likely have impacted the outcome.

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 or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on March 15, 2011, and ended on April 30, 2017, at which time the Tenants vacated the rental unit. At the end of the tenancy, rent was due in the amount of \$900.00 per month. The Tenants paid a security deposit of \$400.00 and a pet damage deposit of \$300.00, which the Landlord holds.

On behalf of the Tenants, N.B. testified that both Tenants were present when the Landlord was provided with a type-written letter confirming their forwarding address in writing on April 30, 2017. A copy of the letter was included with the Tenants' documentary evidence.

In reply, L.F. referred to an inability to contact the Tenants, the Landlord's sick mother, a lack of understanding of the *Act*, and difficulty with English, as reasons the security deposit has not been returned.

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 the security deposit or make an application for dispute resolution within 15 days after receipt of 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 security deposit.

In this case, N.B. testified, and I find, that the Landlord received the Tenants' forwarding address in writing on April 30, 2017. Accordingly, the Landlord had until May 15, 2017, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord, or \$1,400.00, pursuant to section 38(6) of the *Act*. I also find the Tenant is entitled to recover the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,500.00, which is comprised of \$1,400.00 for the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee paid to make the Application.

Conclusion

I grant the Tenants a monetary order in the amount of \$1,500.00. 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: November 8, 2017

Residential Tenancy Branch