



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, made on July 16, 2018 (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/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing and provided affirmed testimony. The Landlord attended the hearing and was accompanied by M.Z., a witness. The Tenants, the Landlord, and M.Z. provided affirmed testimony.

The Tenants testified the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord confirmed that documentary evidence to be relied upon was served on the Tenants by leaving a copy in the mail slot by the front door. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Therefore, pursuant to section 71 of the *Act*, I find the Application package and the Landlord's documentary evidence 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 and/or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on July 1, 2015, and ended on April 30, 2018. During the tenancy, rent was due in the amount of \$1,950.00 per month. The Tenants paid a security deposit of \$950.00, some of which was repaid to the Tenants.

The Tenants testified that a forwarding address was provided to the Landlord via email on June 30, 2018. A copy of the email was submitted into evidence. The Landlord responded to the email on July 3, 2018. However, the Tenants testified the Landlord retained \$487.00 from the security deposit.

In reply, the Landlord testified that a payment was made to the Tenants which consisted of \$463.00 as the repayment of part of the security deposit plus an additional amount as reimbursement of utility charges paid by the Tenants. The Landlord agreed that \$487.00 was withheld due to issues with the condition of the rental unit including cleaning, the garden and the kitchen, holes in the walls, dirty window frames, and the floor and carpets.

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 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. In this case, I find the Tenants provided the Landlord with his forwarding address in writing by email on June 30, 2018. The Landlord responded and confirmed receipt on July 3, 2018. I find the Tenants' forwarding address is deemed to have been received by the Landlord on July 3, 2018. Accordingly, pursuant to section 38(1) of the *Act*, the Landlord had until July 18, 2018, to repay the security deposit in full or make an

application for dispute resolution. However, it appears the Landlord repaid only \$463.00 to the Tenants, contrary to 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 security deposit. Policy Guideline #17 provides examples of the different ways deposits may be doubled. It states:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit (\$400 x 2 = \$800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 (\$800 - \$275 = \$525).

[Reproduced as written.]

Pursuant to section 38(6) of the *Act* and Policy Guideline #17, I find the Tenants are entitled to a monetary award of \$1,437.00, which has been calculated in accordance with Example A above, as follows:

$$\mathbf{\$950.00 \times 2 = \$1,900.00}$$

$$\mathbf{\$1,900.00 - \$463.00 = \$1,437.00}$$

Having been successful, I also find the Tenants are entitled to recover the 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 \$1,537.00, which is comprised of \$1,437.00 for double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,537.00. 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: November 22, 2018

Residential Tenancy Branch