



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PW COMOX DEVELOPMENT LP AND PW COMOX HOLDINGS
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On October 30, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenants attended the hearing. L.R. and E.K. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on November 7, 2019 and L.R. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

L.R. advised that the Landlord’s evidence was served to Tenant M.F.’s boyfriend by hand on March 4, 2020. M.F. confirmed that she received this package that day, that they had reviewed this evidence, and that they were prepared to respond to it. As this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2019 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around September 30, 2019. Rent was established at \$2,430.00 per month, due on the first day of each month. A security deposit of \$1,215.00 and a pet damage deposit of \$1,215.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants provided their forwarding address in writing on the move-out inspection report on September 27, 2019.

M.F. referenced her email to the Landlord, dated October 18, 2019, requesting the status of their deposits. She then emailed the Landlord again on October 22, 2019 as she did not receive a response to her earlier email. That same day she received an email from the Landlord stating that their deposits were sent on October 7, 2019 but were inadvertently sent to the wrong address. On October 25, 2019, she emailed the Landlord requesting double the deposits as the Landlord did not comply with Section 38 of the *Act*. She cited this section of the *Act* and stated that even if the Landlord attempted to return their deposits in accordance with the *Act*, there are no provisions in the *Act* which pertain to administrative errors when doing so. As such, the Tenants are seeking compensation in the amount of **\$4,860.00** because the Landlord did not comply with Section 38 of the *Act* with respect to the security and pet damage deposits. She also drew my attention to the Landlord's evidence confirming that the cheque for the deposits was mailed to the wrong address.

L.R. advised that the deposits were mailed to the Tenants on October 7, 2019; however, he acknowledged that the Landlord unintentionally mailed this to the wrong address. He stated that this was a rare occurrence, that the Landlord is honest, and that this was not done intentionally. He stated that once it was discovered that the cheque was mailed to the wrong address, the Landlord offered to send out a new cheque to any address or he offered to drive it directly to them for immediate delivery.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the Tenants provided a forwarding address in writing on September 27, 2019 and that the tenancy ended on or around September 30, 2019. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposits in full **or** make an application to claim against the deposits. There is no provision in the *Act* which allows the Landlord to retain the deposits without the Tenants' written consent.

While I understand the Landlord's position that they attempted to return the deposits in full within this 15-day timeframe to comply with the *Act*, the consistent and undisputed evidence is that they failed to return the deposits in full to the Tenants within this deadline, due to their own inadvertent administrative error.

As the Tenants did not provide written authorization for the Landlord to keep any amount of the deposits, and as the Landlord did not return the deposits in full or make an Application to keep the deposits within 15 days of September 30, 2019, I find that the Landlord illegally withheld the deposits contrary to the *Act*, and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit and pet damage deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **\$4,860.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

| | |
|------------------------------------|-------------------|
| Doubling of the security deposit | \$2,430.00 |
| Doubling of the pet damage deposit | \$2,430.00 |
| Recovery of filing fee | \$100.00 |
| TOTAL MONETARY AWARD | \$4,960.00 |

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$4,960.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 13, 2020

Residential Tenancy Branch