



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSDS-DR

Introduction:

This matter was initiated as an ex parte Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act (Act)*. The Adjudicator considering the matter concluded that the order that the direct request proceeding should be reconvened in accordance with section 74 of the *Act*.

This participatory hearing was convened to consider the Tenants' application for a monetary Order for the return of the security deposit and a rent refund.

The male Tenant stated that on August 27, 2020 the Dispute Resolution Package and evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application.

The male Tenant stated that on September 05, 2020 a second copy of the Dispute Resolution Package and evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*.

As the aforementioned documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit and the first month's rent?

Background and Evidence:

The Tenants submit that:

- In April of 2020 they communicated with the Landlord, via email;
- The Landlord and the Tenants signed a tenancy agreement, via email, a copy of which was submitted in evidence;
- The tenancy agreement was for a fixed term that was to begin on July 04, 2020 and August 03, 2020;
- They agreed to pay rent of \$1,700.00 for this tenancy and a security deposit of \$600.00;
- The Landlord asked them to pay the \$1,700.00 to his lawyer, in US funds;
- On April 05, 2020 they sent \$1,200.00 in US funds to the Landlord's lawyer;
- After they paid the funds to the Landlord's lawyer, the Landlord asked for additional money;
- They became suspicious of the transaction and asked the Landlord to refund their money;
- On April 23, 2020 the Landlord promised to refund their money but the money has not been refunded;
- The Landlord has not responded to any of their attempts to communicate after April 23, 2020;
- The Landlord never provided them with access to the rental unit; and
- On July 27, 2020 they sent the Landlord a forwarding address, by registered mail.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant and the Landlord entered into a written tenancy agreement that was to begin on July 04, 2020 and was to end on August 03, 2020.

On the basis of the undisputed evidence, I find that the Tenant paid \$1,200.00 in US funds to the Landlord for this tenancy.

On the basis of the undisputed evidence, I find that this tenancy did not proceed because the Landlord did not respond to any communications after April 23, 2020 and he made no efforts to provide the Tenant with access to the rental unit.

I find that the Landlord effectively ended this tenancy before it began, by failing to provide the Tenant with access to the rental unit. I therefore find that the Landlord is obligated to return all of the money the Tenant paid for the unit.

The internet shows that the US dollar was worth \$1.4256 Canadian dollars on April 05, 2020. As the Tenant paid \$1,200.00 in US funds, I find they are entitled to recover

\$1,710.72 in Canadian currency, which represents a return of the rent and the security deposit paid.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit, which is an additional \$600.00.

Conclusion:

The Tenant has established a monetary claim of \$2,310.72 and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: December 11, 2020

Residential Tenancy Branch