



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 8, 2021 (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
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on November 22, 2021 as a teleconference hearing. Only the Tenants appeared at the appointed date and time. No one appeared for the Landlords. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenants and I were the only persons who had called into this teleconference.

The Tenants testified the Notice of Adjourned Hearing and documentary evidence package was served on the Landlords by registered mail on June 5, 2021. A copy of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the above-mentioned documents June 10, 2021, the fifth day after their registered mailing. The Landlords did not submit any documentary evidence in response to the Application.

The Tenants 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 Landlords return all or part 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 Tenants testified that the tenancy began on July 15, 2020 and ended on February 28, 2021. During the tenancy, rent was due in the amount of \$1,250.00 on the 15th day of each month. The Tenants testified that they paid a security deposit of \$1,000.00 to the Landlords. The Tenants provided a receipt confirming the security deposit paid to the Landlord.

The Tenants testified that they sent the Landlords their forwarding address in writing by registered mail on March 25, 2021. The Tenants provided a copy of the letter addressed to the Landlords which states that the Landlords are entitled to deducting \$625.00 from the security deposit which represents a payment of half of the month of rent. The Tenants directed the Landlords to return the remaining \$375.00 to the Tenants by cheque to the forwarding address provided, or by e-transfer to an email address provided.

The Tenants stated that the Landlords e-transferred the Tenants' remaining portion of their security deposit in the amount of \$375.00 on June 1, 2021. The Tenants stated that the Landlords failed to return their deposit within the timelines permitted under the *Act*. As such, the Tenants feel entitled to compensation and for the return of the filing fee.

Analysis

Based on the documentary evidence before me for consideration 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. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the Tenants vacated the rental unit on February 28, 2021 and provided the Landlords with their forwarding address by registered mail on March 25, 2021. Pursuant to Section 88 and 90 of the *Act*, I find the Tenants' forwarding address is deemed to have been served to the Landlords 5 days later, on March 30, 2021.

I accept that the Tenants paid a security deposit in the amount of \$1,000.00 to the Landlords. I accept that the parties agreed that the Landlords were entitled to apply \$625.00 of the \$1,000.00 towards rent.

As there is no evidence before me that the Landlords were entitled to retain the remaining portion of the security deposit of \$375.00 under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until April 14, 2021 to repay the remaining deposit in the amount of \$375.00 to the Tenants, or make an application for dispute resolution if the Landlords felt entitled to retaining this portion.

I accept that the Landlords e-transferred the remaining portion of the Tenants' security deposit in the amount of \$375.00 on June 1, 2021. I find this transfer to extend beyond the time limit set out under Section 38 of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the remaining portion of the security deposit following the agreed upon deduction, less any amounts already received.

The Residential Tenancy Branch Policy Guideline #17 requires the arbitrator double the remaining amount of security deposit after the agreed upon deduction (\$1,000.00 - \$625.00 = \$375.00).

The arbitrator is then required to double the remaining amount of security deposit (\$375.00 x 2 = \$750.00), then deduct the amount already returned to the Tenant (\$750.00 - \$375.00 = **\$375.00**), to determine the amount of the monetary order.

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 **\$475.00**.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$475.00. 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, 2021

Residential Tenancy Branch