



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding pursuant to section 38.1 of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the Tenants for a monetary order for the return of a security deposit and to recover the filing fee.

The Tenants submitted signed Proof of Service Tenant Notice of Direct Request Proceeding documents which declare that the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding and supporting evidence by registered mail on December 29, 2021, which service was witnessed by D.C. The Tenants provided copies of Canada Post registered mail receipts confirming the date and time of purchase and the tracking number. Pursuant to sections 89 and 90 of the Act, I find that the Landlord is deemed to have received these documents on January 3, 2022, five days after they were mailed.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the Act?
2. Are the Tenants entitled to recover the filing fee pursuant to section 72 of the Act?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants submitted the following relevant evidentiary material:

- A copy of a signed residential tenancy agreement indicating a monthly rent of \$3,220.00 and a security deposit of \$1,610.00, for a tenancy commencing on September 15, 2020;
- A copy of an email to the Tenants dated September 4, 2020 confirming receipt of \$1,610.00;
- A copy of a Condition Inspection Report confirming the move-in inspection took place on September 9, 2020 and that the move-out condition inspection took place on November 29, 2021;
- A copy of a Proof of Service Tenant Notice of Forwarding Address for Return of Security and/or Pet Damage Deposit confirming service of a forwarding address by providing it on a condition inspection report on November 29, 2021 and by email on December 1, 2021;
- A copy of an email exchange dated December 1, 2021 confirming the Tenants gave and the Landlord received the Tenants' forwarding address;
- A copy of a Tenant's Direct Request Worksheet dated December 21, 2021 confirming the amount of the security deposit paid and that the tenancy ended on November 30, 2021.

Analysis

Section 38(1) of the Act states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposits in full or make an application for dispute resolution claiming against the deposits.

Section 38(6) of the Act states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposits.

I have reviewed all documentary evidence and I find that the Tenants paid a security deposit in the amount of \$1,610.00 as indicated in the tenancy agreement and as confirmed in the email dated September 4, 2020.

I accept the following declarations made by the Tenants on the Tenant's Direct Request Worksheet:

- The Tenants have not provided consent for the Landlord to keep all or part of the security deposit and pet damage deposit;
- There are no outstanding monetary orders against the Tenants for this tenancy; and
- The Tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the Act.

I accept the Tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on November 30, 2021.

I find it is more likely than not that the Landlord received the Tenants' forwarding address during the move-out inspection on November 29, 2021, as supported by the email exchange dated December 1, 2021.

I accept the evidence before me that the Landlord did not return the security deposit to the Tenants and did not file an Application for Dispute Resolution requesting to retain the security deposit by December 15, 2021, within the fifteen days granted under section 38(1) of the Act.

Based on the foregoing, I find that the Landlord must pay the Tenants double the amount of the security deposit in accordance sections 38(6) of the Act, which totals \$3,220.00 (\$1,610.00 x 2).

Having been successful I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I grant the Tenants a monetary order in the amount of \$3,320.00 for the return of double the security deposit and in recovery of the filing fee (\$3,220.00 + \$100.00). The order must be served on the Landlord. 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: January 25, 2022

Residential Tenancy Branch