



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDS-DR, FFT

Introduction

The tenants seek the return (and doubling) of their security deposit, pursuant to section 38 of the *Residential Tenancy Act* (“Act”). In addition, they seek recovery of the cost of the filing fee pursuant to section 72 of the Act.

Preliminary Issue: Service

The tenant (V.G.) attended the hearing, but neither respondent landlord attended. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch’s *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The tenant testified under oath that she served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The tenant provided me with the Canada Post registered mail tracking number and testified that she mailed the package on November 13, 2021. She mailed the package to the address of the landlords. However, the landlords refused to claim the package and it was returned.

Given the undisputed evidence before me, it is my finding that the landlords were appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings. It is also worth noting that refusing to accept the legal service of documents—as the landlords have done here—does not nullify service nor does it stop legal proceedings.

Issues

1. Are the tenants entitled to the return, and doubling, of their security deposit?
2. Are the tenants entitled to recover the cost of the application filing fee?

Background and Evidence

The particulars of this claim are, as stated in the application, as follows:

The landlord has not returned the deposit. We sent a message of our moving date as well as our forwarding address however, no action was taken by the landlord. I want to recover the \$100 filing fee and double the amount of my deposit since the landlord has not responded within 15 days.

The tenancy began on May 1, 2019 and ended on July 31, 2021. Monthly rent was \$1,800.00 and the tenants paid a \$900.00 security deposit. A copy of the written tenancy agreement was in evidence.

Under oath, the tenant confirmed that they provided their forwarding address to the landlord on August 26, 2021. They provided a copy in-person and by registered mail. At no point did the tenants provide written authorization for the landlords to retain any of the security deposit, nor have the landlords made an application for dispute resolution claiming against the security deposit.

Analysis

Claim for Security Deposit

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the tenancy ended on July 31, 2021. The landlords had the tenants' forwarding address, at the latest, on August 26, 2021. The landlords neither repaid the security deposit within 15 days nor have they made an application claiming against that deposit. In other words, the landlords had no lawful right to keep the deposit.

As such, it is my finding and order that the landlords must repay the tenants their security deposit, subject to the doubling provision as follows.

Doubling Provision

Section 38(6) of the Act states that

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, as the landlords did not comply with subsection 38(1) of the Act they are therefore (a) barred from making any future claim against the security deposit, and (b) ordered to pay the tenants double the amount of the security deposit, in the amount of \$1,800.00.

Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. As the tenants were successful in their application, I therefore grant their claim for reimbursement of the \$100.00 filing fee.

Summary of Award and Monetary Order

A monetary order for \$1,900.00 is issued in conjunction with this decision to the tenants. The landlords will receive a copy of this decision from the Residential Tenancy Branch but the tenants must serve a copy of the monetary order on the landlords.

If the landlords fail, or refuse, to pay the tenants \$1,900.00 within 15 days of receiving a copy of this decision, then the tenants may enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court). The landlords will be obligated to pay any additional court costs should enforcement be necessary.

Conclusion

For the reasons given above, the tenants' application is **GRANTED**.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 14, 2022

Residential Tenancy Branch