



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit and compensation under Section 38. The application is inclusive of an application for loss and recovery of the filing fee.

Both, the tenant and the landlord were represented at today's hearing. Both parties acknowledged receiving the evidence of the other. The parties were also permitted to present any relevant evidence via testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters, but were unable to agree. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows.

The tenancy began March 01, 2013. Rent was \$2100.00 per month. The landlord collected a security deposit of \$1050.00 at the outset of the tenancy, which they retain in trust. The parties did not conduct a mutual *move in* inspection in accordance with the Act. The tenancy ended March 31, 2015. The parties did not conduct a mutual *move out* inspection in accordance with the Act. The parties did not agree as to the

administration of the security deposit at the end of the tenancy. The landlord testified they received the tenant's forwarding address within an e-mail in early April 2015, for which the tenant provided a copy into evidence of an e-mail dated April 02, 2015. The tenant requested return of the security deposit, and the landlord determined to retain the security deposit in lieu of purported damage to the unit – although the landlord has not filed an application in this regard.

The tenant further seeks compensation for a portion of the *Hydro* utility in the amount of \$105.00, with which the landlord agrees.

Analysis

On reflection of all the relevant evidence for this matter I have reached a Decision. All references to the Act and may be viewed at www.gov.bc.ca/landlordtenant .

I find that, by agreement, the tenant is owed **\$105.00** for *Hydro* utility.

I find that the landlord did not comply with the requirements of **Section 23 and 35** in respect to performing condition inspections and completing the requisite reports in accordance with the Act. As a result, I find the landlord's right to make a claim against the security deposit were effectively extinguished as per **Sections 24(2) and 36(2)** of the Act. None the less, it remains available to the landlord to make an application for Dispute Resolution in respect to *damage* to the unit if they have sufficient evidence in support of their claims.

Section 88 of the Act : **How to give or serve documents generally**, prescribes how documents must be given by one party to the other. In the absence of the tenant providing the landlord with their forwarding address *in writing*, as per the requirements of **Section 88 and 38(1)** of the Act, I am satisfied the landlord received the tenant's forwarding address via e-mail in early April 2015. As a result, **I Order** in accordance with **Section 71(2)(c)** of the Act that in this matter the provision of the tenant's forwarding address via e-mail is *sufficiently given or served for purposes of this Act*.

Therefore, I find that Section **38(1)** of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing in early April 2015 and is therefore liable under **Section 38(6)** which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$1050.00 and was obligated under **Section 38** to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$2100.00 in regards to the security deposit. The parties have established by agreement that the tenant is owed \$105.00 for *Hydro* utility. The tenant is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$2255.00**.

Conclusion

I grant the tenant a **Monetary Order** under Section 67 of the Act for the sum of **\$2255.00**. If necessary, this **Order** may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 28, 2015

Residential Tenancy Branch

