



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 07, 2015 seeking to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. T

The Tenant submitted documentary evidence that the Landlord was served notice of this application and this hearing by registered mail on May 8, 2015. Canada Post tracking information confirms that the package was signed received on May 11, 2015.

Based on the undisputed evidence of the Tenant, I find that the Landlord was sufficiently served notice of this proceeding and I continued in absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to double the return of her security deposit?

Background and Evidence

The Tenant submitted evidence that she entered into a written month to month tenancy agreement that began on March 1, 2015. Rent of \$900.00 was due on or before the first of each month. On or before February 5, 2015 the Tenant paid \$450.00 as the security deposit.

The Tenant testified that she was required to pay a pet deposit of \$275.00 on March 16, 2015; however, due to the break down in the tenancy relationship that pet deposit was never paid.

The Tenant provided evidence that shortly after March 16, 2015 a Mutual Agreement to End Tenancy was signed by both parties to end the tenancy effective March 31, 2015. The Tenant vacated the property as of March 27, 2015.

On April 18, 2015 the Tenant personally served the Landlord with her forwarding address in writing by leaving the document with the Landlord's adult roommate.

The Landlord has failed to return the Tenant's security deposit and as a result the Tenant now seeks the return of double her deposit in the amount of \$900.00 (2 x \$450.00).

Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

Regarding the End of Tenancy:

Section 44 of the *Act* stipulates that a tenancy ends on the earlier of the following: 44(1)(d) when the tenant vacates or abandons the rental unit or 44(1)(c) the landlord and tenant agree in writing to end the tenancy.

Regarding the Return of the Security Deposit:

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 88€ of the *Act* provides that a document is considered served if it is personally served to an adult who resides with the Landlord.

Doubling the Return of the Security Deposit:

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Regarding the Monetary Award:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding Filing Fee:

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

In this case the parties mutually agreed to end the tenancy effective March 31, 2015; however, the Landlord regained possession of the rental unit on March 27, 2015 when the Tenant vacated. The Landlord was served with the Tenant's forwarding address on April 18, 2015, pursuant to section 88 of the *Act*.

Based on the above, the Landlord was required to return the Tenant's security deposit in full or file an application for dispute resolution no later than May 3, 2015, pursuant to section 38(1) of the *Act*. The Landlord did neither.

As per the foregoing, I conclude that the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to the doubling provision stipulated in Section 38(6) of the *Act*.

After consideration of the foregoing, I find the Tenant submitted sufficient evidence to prove the merits of her application. Accordingly, I award the Tenant monetary compensation for the return of double her security deposit (2 x \$450.00) plus interest of \$0.00 in the amount of **\$900.00**, pursuant to sections 38(6) and 67 of the *Act*.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant has succeeded with her application and was awarded monetary compensation of \$900.00 plus the \$50.00 filing fee.

The Tenant has been issued a Monetary Order for **\$950.00** (\$900.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the

Landlord does not comply with this Order it may be filed with the 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: October 14, 2015

Residential Tenancy Branch

