



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 was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 22, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order for the return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant was represented at the hearing by E.R. The Landlord attended the hearing on his own behalf. Both provided a solemn affirmation at the outset of the hearing.

On behalf of the Tenant, E.R. testified the Tenant's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on June 25, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord is deemed to have received the Tenant's Application package on June 30, 2016.

The Landlord provided two pages of documentary evidence in response to the Tenant's Application. When asked about service of these documents, the Landlord testified there was some email correspondence with the Tenant before the hearing, but was unable to confirm a date or method of service. I am not satisfied the Landlord's documentary evidence was served on the Tenant in accordance with the Rules of Procedure. The documentary evidence received at the Landlord to the Residential Tenancy Branch on December 8, 2016, has not been considered further in this Decision.

Both parties were represented at the hearing and were prepared to proceed. No further issues were raised with respect to service or receipt of the above documents. The parties 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. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenant submitted with her documentary evidence copies of tenancy agreements between the parties. The agreements confirm the tenancy began on May 15, 2013. The parties acknowledged the tenancy ended when the Tenant vacated the rental unit on March 31, 2016. At the end of the tenancy, rent of \$1,500.00 per month was due on the first day of each month. The Tenant and the co-tenant paid a security deposit of \$700.00 at the beginning of the tenancy.

On behalf of the Tenant, E.R. confirmed the Tenant is seeking a monetary award of double the amount of the security deposit retained by the Landlord. The Tenant is seeking this amount because half the security deposit, or \$350.00, was returned to the co-tenant at the end of the tenancy. The Landlord confirmed that \$350.00 was repaid to the co-tenant and that he retains the balance of \$350.00.

E.R. also testified that the Landlord was provided with the Tenant's forwarding address in writing in a letter dated May 2, 2016. A copy of the letter was submitted with the Tenant's documentary evidence. The Landlord confirmed receipt of the Tenant's letter and forwarding address at around that time, but confirmed he has not repaid the balance to the Tenant. According to the Landlord, the Tenant did not give proper notice to end the tenancy pursuant to the *Act*, and left the rental unit in poor condition that required extensive cleaning. However, he stated he did not want the "hassle" of making an application for dispute resolution.

Analysis

Based on the documentary evidence 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 the security deposit or make an application for dispute resolution within 15 days after the date the landlord receives the tenant's forwarding address in writing. On behalf of the Tenant, E.R. testified the letter was mailed to the Landlord on May 2, 2016. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received five days later.

Accordingly, I find the Landlord, who confirmed receipt of the letter but was unable to recall the precise date, is deemed to have received the Tenant's forwarding address in writing on May 7, 2016.

Pursuant to section 38(1) of the *Act*, the Landlord had until May 22, 2016 to return the balance of the security deposit or make a claim against it by filing an application for dispute resolution. Although the Landlord returned half of the security deposit to the co-tenant, he did not repay the balance of \$350.00 to the Tenant or file an application for dispute resolution in the prescribed timeframe.

Section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. This is repeated in Residential Tenancy Branch Policy Guideline 17(B)(11), which states:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17(C)(5) provides assistance when calculating the amount of the deposit to be returned to a tenant. Applying these guidelines, I find the Tenant is entitled to an award of \$1,050.00, which is double the amount of the original security deposit, less the portion of the security deposit paid to the co-tenant ($\$1,400.00 - \$350.00 = \$1,050.00$). Having been successful, I also find the Tenant is also entitled to recover \$100.00 from the Landlord in satisfaction of the filing fee paid to make the Application.

In light of the above findings, and pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,150.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,150.00. This 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: December 19, 2016

Residential Tenancy Branch