



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, 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 recovery of the filing fee.

Both parties were represented in this proceeding. The tenant and the landlord's agent attended the hearing. The landlord's acknowledged receiving the Notice of Hearing document from the respondent landlord of this matter; however, claims they did not receive the tenant's application and asserted the respondent landlord had not received it. None the less, the landlord's agent acknowledged knowing the tenant was applying for the return of their deposit and testified they had evidence of their own before them to defend their assertion the tenant owed the landlord for utilities and for a damaged light fixture. The tenant testified they sent the respondent landlord all of their evidence inclusive of their application and notice of hearing in one mailing by registered mail and testified that if the landlord had received the notice of hearing they would also have received everything else. On balance of probabilities I found the landlord received the tenant's Notice of Hearing package inclusive of the application.

The parties were provided opportunity to present any relevant evidence in testimony. The parties were also provided enhanced opportunity to discuss their dispute with a view to settling all matters of the tenant and the landlord, to no avail. Therefore, the hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit and amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows. The tenancy began in September 2015 and since ended pursuant to a 2 Month notice to End for landlord's Use and the tenant received the requisite compensation equivalent to one month's rent. During the tenancy the rent was \$2100.00. The landlord collected a security deposit of \$1050.00 at the outset of the tenancy which the landlord retains in trust. At the outset of the tenancy there was no mutual *move in* inspection conducted as required by the Act. The tenancy ended August 01, 2016. The landlord and tenant conducted a mutual *move out* inspection at the end of the tenancy as required by the Act and a copy of the condition inspection report was provided to the tenant and submitted into evidence. The landlord's agent did not dispute the tenant provided their forwarding address on the condition inspection report dated August 02, 2016. Other than a broken kitchen light fixture cover, the report did not identify any other deficiency; and, both parties signed the move out condition inspection report.

The landlord claims they had evidence before them that the broken light fixture cover resulted in purchasing a new light fixture for \$150.00, for which the tenant agreed to compensate the landlord. The landlord also claims they had evidence before them that the tenant owed unpaid utilities in the amount of \$361.45. The tenant disputed the latter amount as they did not have benefit of the landlord's evidence, however agreed to compensate the landlord their stated amount.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the relevant evidence for this matter, I find as follows.

Section 38(1) of the Act provides as follows

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.

Moreover than not completing a *move in* inspection at the outset of the tenancy, I find 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 on August 02, 2016 and is therefore liable under Section 38(6) which provides as follows:

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 within 15 days of receiving the tenant's forwarding address. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement of \$2100.00 and is further entitled to recovery of the 100.00 filing fee for a total entitlement of \$2200.00. From this amount I deduct the parties' agreement for the landlord to be compensated for a broken light fixture and for unpaid utilities in the sum of \$511.45.

Calculation for Monetary Order

Security deposit <i>doubled</i> to tenant (\$1050.00 x 2)	\$2100.00
Filing fee to tenant	\$100.00
<i>Less – to landlord for broken light fixture</i>	<i>-\$150.00</i>
<i>Less – to landlord for utilities</i>	<i>-\$361.45</i>
Monetary Award to tenant	\$1688.55

I grant the tenant a Monetary Order under Section 67 of the Act for **\$1688.55**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in relevant part is granted.

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: February 21, 2017

Residential Tenancy Branch