



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; FF

Introduction

This is the Tenant's Application for Dispute Resolution seeking return of the security deposit and pet damage deposit; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she mailed the Notice of Hearing documents, by registered mail, to the Landlord. She stated that the documents came back to her "refused". The Tenant provided a copy of the registered mail receipt, tracking number and Canada Post tracking information printout, which confirm that the documents were mailed out on March 2, 2017, and returned "refused by recipient" on March 15, 2017.

I am satisfied that the Landlord was duly served with the Notice of Hearing package pursuant to the provisions of Section 89 of the Act. The Hearing continued in the Landlord's absence, and remained open for 15 minutes.

The Tenant also testified that she served the Landlord with her documentary evidence on April 12, 2017, by hand delivering the documents to the Landlord, with a witness present. The Tenant provided a document from the witness, attesting that the documents were served at 4:45 p.m. on April 12, 2017.

Issue(s) to be Decided

Is the Tenant entitled to return of the security and pet damage deposits?

Background and Evidence

The Tenant provided the following affirmed testimony:

This tenancy began on October 1, 2016, and ended on January 31, 2017. The Tenant paid a security deposit in the amount of \$500.00, and a pet damage deposit in the amount of \$500.00, at the beginning of the tenancy.

The Tenant provided the Landlord with her forwarding address in writing “in mid-January” by hand delivering the address to the Landlord. She stated that she also sent the Landlord her forwarding address on February 14, 2017, by e-mail. The Tenant provided a copy of the e-mail in evidence, along with the Landlord’s response on February 15, 2017.

The Tenant testified that no Condition Inspection Report was completed at the beginning or the end of the tenancy.

Analysis

Section 38 of the Act provides:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

- (a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,
- (b) by giving the deposit personally to the tenant, or
- (c) by using any form of electronic
 - (i) payment to the tenant, or

(ii) transfer of funds to the tenant.

[Reproduced as written]

Based on the undisputed affirmed testimony of the Tenant, I find that the Landlord did not comply with Sections 38(1) and (5) of the Act. Therefore, I find that the Tenant is entitled to compensation in the equivalent of double the amount of the deposits, totalling **\$2,000.00**, pursuant to the provisions of Section 38(6) of the Act.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

Conclusion

The Tenant is hereby provided with a Monetary Order in the amount of **\$2,100.00** for service upon the Landlord. This Order may be filed in the Provincial Court of 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: May 15, 2017

Residential Tenancy Branch