

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of the security deposit, for compensation for loss or damage under the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 23, 2017. The registered mail was mailed to the correct address and the tracking information indicated the Landlord received the package on March 29, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absences.

Preliminary matters

The Tenant said a previous hearing had been held in which the Landlord did not attend and the application was dismissed with leave to reapply, because the Hearing Package was not served to the Landlord in accordance with the Act. The Tenant said she has now reapplied with this application.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is there a loss or damage and if so should the Tenant be compensated?

Background and Evidence

This tenancy started on June 1, 2016 as a fixed term tenancy with an expiry date of August 31, 2016 and then continued on a month to month basis. The tenancy ended October 31, 2016. Rent was \$2,600.00 per month payable on the 1st day of each month. The Tenant said she paid a security deposit of \$2,600.00 on April 18, 2016. The Tenant said there were no condition inspection reports completed for this tenancy.

The Tenant said she moved out of the rental unit on October 31, 2016 and gave the Landlord a forwarding address by email on November 16, 2016. The Tenant said the Landlord acknowledged the Tenant's email on November 22, 2016 and the Landlord said he would send the security deposit after he had helped a sick friend.

The Tenant said she has not heard from the Landlord since that email although she has email the Landlord a number of times since the last email of November 22, 2016.

The Tenant requested the return of the security deposit of \$2,600.00, the filing fee for both hearings in the amount of \$200.00, postage costs of \$39.52 and staff costs to assist with the hearing information of \$169.26. The Tenant said her total claim is for \$3,008.72.

Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on November 16, 2016 and the Landlord answered it on November 22, 2016. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution by December 1, 2016. Consequently I find for the Tenant and grant an order for double the security deposit of \$2,600.00 in the amount of $\$2,600.00 \times 2 = \$5,200.00$.

In regard to the Tenant's claims for postage and staff time to assist her in preparing information for the hearing, both these costs are not illegible under the Act. I dismiss the Tenant's claims for postage and staff labour without leave to reapply.

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee for this hearing of \$100.00 from the Landlord. Further I dismiss without leave to reapply the filing fee of \$100.00 for the first hearing. This costs is not part of this hearing. Consequently, pursuant to section 67 a monetary order for \$5,300.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$5,200.00 plus the \$100.00 filing fee.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$5,300.00 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 23, 2017.

Residential Tenancy Branch