



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit paid to the landlord and for the application filing fee.

Both the landlord and the tenant appeared at the hearing. An advocate also appeared for the tenant, and the advocacy organization's manager was observing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and had the opportunity to present their evidence orally and in written and documentary form, to make submissions to me and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue. The landlord had submitted evidence to the Residential Tenancy Branch and testified that she had also left it in the tenant's mailbox. The tenant testified that she had not received the landlord's evidence. It was not necessary to resolve this issue as the landlord's evidence was not relevant to the tenant's application.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Is the tenant entitled to recover the application filing fee from the landlord?

Background and Evidence

A copy of the written tenancy agreement was in evidence. This tenancy began in April 1, 2009. It was a month to month tenancy, with a monthly rent of \$650.00 due on the first of each month. A security deposit of \$325.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The tenancy ended based on a 2 Month Notice to End Tenancy for Landlord's Use effective July 30, 2016. The tenant provided the landlord with her forwarding address in writing on August 3, 2016. A copy of the tenant's letter providing her forwarding address was in evidence.

The landlord acknowledged that the tenant did not sign over a portion of the security deposit and that the landlord did not apply for authorization to retain it. A move-out inspection was not conducted. The tenant says that she attempted to arrange a move-out inspection with the landlord. The landlord says that this is not so.

The tenant was granted a fee waiver to make this application. However, she seeks repayment of the waiver. She testified that she was advised by Service BC that she should seek \$100.00 for the application filing fee and then repay Service BC.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

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.

...

(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.

(Emphasis added)

Based upon the materials in evidence and the facts agreed upon by the parties, I find that the landlord has breached s. 38 of the Act.

It was agreed that the tenant had not authorized the landlord to retain any portion of the security deposit. It was also agreed that the landlord had not applied within 15 days of the end of the tenancy or receipt of the tenant's forwarding address to retain a portion of the security deposit, as required by s. 38.

The security deposit is held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's consent. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlord has also extinguished her right to claim against the security deposit by not arranging for a condition inspection report at move-out, pursuant to s. 36 of the Act. It is the landlord's obligation to offer the tenant opportunities to conduct the move-out inspection.

The landlord may still file an application for loss or damage to the rental unit. However, the issue of the security deposit has been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenant the total sum of **\$650.00**, comprised of double the security deposit (2 x \$325.00). No interest is payable for the period of time the landlord has held the deposit.

I do not award the tenant the application filing fee, as that fee was waived. It seems unlikely that Services BC advised her to apply to recover it and then reimburse it. Certainly there was no documentary evidence of that.

Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: July 07, 2017

Residential Tenancy Branch