



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT: MNDC, MNSD, FF
 LANDLORD: MNR, MNDC, MNSD, FF

Introduction

The Tenant's application dealt with an application by the Tenant for the return of double her security and pet deposits, for compensation for loss or damage under the Act, regulations or the tenancy agreement and to recover the filing fee for this application.

The Landlord's application dealt with an application by the Landlord to retain the Tenant's security and pet deposits, for compensation for loss or damage under the Act, regulations or the tenancy agreement, for compensation for unpaid rent and to recover the filing fee for this application.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on July 20, 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.

The Landlord did not appear at the hearing although there was a request dated September 18, 2017 by the Landlord to reschedule the hearing. The Residential Tenancy Branch responded to the Landlord's request and sent the Landlord information on the process of rescheduling a hearing which includes agreement by both parties to reschedule the hearing or having a representative attend the hearing and request an adjournment. The Tenant said she did not agree to rescheduling the hearing and the Landlord did not have a representative appear at the hearing.

Consequently as the Landlord did not attend the hearing and this matter was set for hearing at 2:00 p.m. on this date.

Residential Tenancy Branch Rules of Procedure, section 10.1, provides:

10.1 Commencement of the dispute resolution proceeding

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of an appearance by the Landlord, the Landlord's application is abandoned and dismissed without leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on September 1, 2016 as a fixed term tenancy with an expiry date of August 31, 2017. The tenancy ended May 31, 2017 by mutual agreement of the parties to end the tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 and a pet deposit of \$250.00 at the start of the tenancy. A move in condition inspection report was completed on September 10, 2016 and a move out condition inspection report was completed on May 31, 2017. The Tenant said she agreed to the report but did not agree to any deductions from her security deposit or pet deposit. .

The Tenant said that she moved out of the rental unit on May 31, 2017 by mutual agreement with the Landlord and gave the Landlord her forwarding address in writing on the move out condition inspection report on May 31, 2017. The Tenant said she told the Landlord she expected all of both her deposits back within 15 days as the Act says. The Tenant continued to say the Landlord sent her a cheque for \$358.66. The Tenant said the Landlord retained \$366.34 for damages without the Tenant's agreement or permission. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her security and pet deposits back.

The Tenant said she has now made an application for double her security and pet deposits returned as indicated by the Act.

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 May 31, 2017. The Landlord did not repay the full security and pet deposits to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by June 15, 2017. Consequently I find for the Tenant and grant an order for double the security deposit of \$425.00 in the amount of $\$425.00 \times 2 = \950.00 and double the pet deposit of \$250.00 in the amount of $\$250.00 \times 2 = \500.00 for a total amount of \$1,450.00. The Landlord has returned \$358.66 and this amount is deducted off the total owing to the Tenant which results in the Landlord owing the Tenant \$1,091.34 for not returning the Tenant's deposits or making an application to retain the Tenant's deposits within the required time limits of the Act.

As the Tenant was successful in this matter the Tenant is also entitled to recover the filing fee of \$100.00 for this application from the Landlord. Pursuant to sections 38, 67 and 72 a monetary order for \$1,191.34 has been issued to the Tenant. This Monetary order represents double the security and pet deposits and the filing fee less the moneys already returned to the Tenant from the Landlord.

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 \$1,191.34 to the Tenant. 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.

The Landlord's application is dismissed without leave to reapply.

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: October 16, 2017

Residential Tenancy Branch