



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD DRI

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 4, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order disputing an additional rent increase.

The Tenant attended the hearing in person. The Landlord attended the hearing in person and was accompanied by her spouse, B.W. All in attendance provided a solemn affirmation.

The Tenant testified that the Application package was served on the Landlord by registered mail. B.W. acknowledged receipt on behalf of the Landlord. In addition, B.W. testified that the Landlord served a documentary evidence package on the Tenant by registered mail. The Tenant acknowledged receipt. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied to dispute an additional rent increase (DRI). This aspect of the Tenant's claim was brought to dispute what she perceived to be a rent increase imposed by the Landlord, although the amount sought was not particularized in the application. She submitted that the pro-rated amount of rent she paid (based on rent in the amount of \$1,350.00 per month) should have been reduced and based on rent in the previously-reduced amount of \$1,000.00 per month. However, the Tenant did not make a monetary claim relating to an alleged overpayment of rent, and the Landlord claimed she did not understand the claim being made. In addition, following the hearing, it was noted that the Landlord submitted a hand-written letter, signed by

the Tenant, into evidence. In it, the Tenant agreed to vacate the rental unit by June 30, 2017, and to pay rent in the amount of \$1,350.00 during this period. There was no indication rent would be any lesser amount, or that rent would be pro-rated if the Tenant vacated before June 30, 2017. This aspect of the Application is dismissed, without leave to reapply.

Issue to be Decided

Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a fixed-term tenancy was in effect from June 1, 2016, to May 31, 2017. The agreement stipulated that the tenant must vacate the rental unit at the end of the fixed term. However, the parties agreed to an extension of the tenancy agreement, and the Tenant ultimately vacated the rental unit on June 17, 2017. In addition, the tenancy agreement confirmed that rent was due in the amount of \$1,350.00 per month. However, due to the Tenant's circumstances, the Landlord agreed to reduce rent in March, April, and May 2017, to \$1,000.00 per month. The Tenant paid a security deposit of \$675.00.

The parties each provided documentary evidence confirming the Tenant gave the Landlord her forwarding address by email on July 3, 2017. The Landlord did not return the security deposit at that time because the address provided did not include a postal code. The Tenant provided a postal code in an email dated July 13, 2017, and the parties confirmed during the hearing that the Landlord paid \$325.00 to the Tenant. The Landlord confirmed she retained the balance of the security deposit it was owed to a tenant who had previously vacated the rental property. The Tenant acknowledged she received the payment of \$325.00 on or before July 17, 2017.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to retain them by making an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, the parties confirmed, and I find, that the Tenant provided her forwarding address to the Landlord in writing on July 3, 2017. I find that the address provided by the Tenant was sufficient for the purposes of returning the security deposit to her. Although the Landlord paid

\$325.00 to the Tenant, she retained the balance of the security deposit, or \$350.00, contrary to the *Act*. There was no evidence before me that the Landlord made a claim against the security deposit by filing an application for dispute resolution. As a result, I find the Tenant is entitled to recover double the amount of the security deposit.

Policy Guideline #17(C)(5) provides assistance when determining a tenant's right to the return of the security deposit when part of it has already been returned. It states:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for an order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

[Reproduced as written.]

Following this example, I find the Tenant is entitled to a monetary award of \$1,025.00, which has been calculated as follows:

$$(\$675.00 \times 2) - \$325.00 = \$1,025.00$$

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,025.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 20, 2017

Residential Tenancy Branch