



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 11, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of her security deposit and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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 Matters

The Tenant was unsure of the legal name of the Landlord and originally provided one name on the original Application, then requested to amend the name through a formal Amendment to an Application.

At the beginning of the hearing, before the Tenant called into the conference call, I confirmed the Landlord’s legal name and she spelled it out for me. I have amended the Application and any resulting orders will have the correct legal name of the Landlord, as provided in testimony by the Landlord.

Issues to be Decided

Should the Tenant receive a Monetary Order for the return of her security deposit?
Should the Tenant be compensated for the cost of the Filing Fee?

Background and Evidence

The Tenant and the Landlord agreed on the following terms of the tenancy:

The fixed-term tenancy began on August 1, 2013, and continued as a month-to-month tenancy after the first year. The monthly rent was \$1,450.00 due on the first of each month. The Landlord collected a security deposit in the amount of \$1,450.00 on July 23, 2013 and still holds the security deposit. The Tenant moved out of the rental unit on February 1, 2018.

The Tenant provided the following affirmed testimony:

The Tenant moved out of the rental unit and met with the Landlord's cousin to return the keys as the Landlord was out of the country. The Landlord did not complete a move-out condition report with the Tenant.

The Tenant stated that she had provided the Landlord her forwarding address several times; however, on April 16, 2018, sent the Landlord a letter via registered mail requesting the return of her security deposit and providing her forwarding address.

The Tenant testified that she did not receive her security deposit, did not give the Landlord permission to keep any of the security deposit and that she applied for Dispute Resolution on May 11, 2018.

The Landlord provided the following affirmed testimony:

The Landlord stated that she had previously served a Two Month Notice to End Tenancy for Landlord's Use to the Tenant. When the Landlord asked the Tenant for the last months rent in January 2018, the Tenant refused; therefore, the Landlord thought she would keep the security deposit.

The Landlord felt that the Tenant owed her rent money over the years as the Landlord had reduced it at times for the Tenant. The Landlord felt that by keeping the security deposit that it would help to compensate for the losses that she had incurred.

The Landlord was out of the country during the time the Tenant moved out of the rental unit. The Landlord stated that she received the Tenant's written notice of her forwarding address sometime at the end of April 2018.

The Landlord acknowledged that she did not have any written consent from the Tenant to keep the security deposit, nor did she apply for Dispute Resolution to keep the security deposit.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days, and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that they requested their \$1,450.00 security deposit and notified the Landlord of their forwarding address on April 21, 2018 in accordance with Sections 88 and 90 of the Act.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the outstanding security deposit for a total of \$2,900.00, pursuant to Section 38 of the Act.

If the Landlord had concerns arising from the losses that arose because of this tenancy, the Landlord should have applied for dispute resolution to retain the security deposit within the time prescribed by the Act. Furthermore, under Section 19 of the Act, the Landlord may only require a security deposit equivalent to half of one month's rent.

As the Tenant was successful in her Application, she should be reimbursed for the \$100.00 filing fee associated with this Application.

Conclusion

The Tenant has established a monetary claim, in the amount of \$3,000.00, which includes \$2,900.00 for double the security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

In accordance with Sections 38(6) and 67 of the Act, I authorize a Monetary Order for \$3000.00 to the Tenant. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province 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: June 28, 2018

Residential Tenancy Branch