



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), seeking a monetary order for compensation from the Landlord, return of their security deposit, and recovery of the filing fee.

The Tenant attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord did not attend.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Matter: Service of Notice of Dispute Resolution Proceeding

The Tenant testified that they served the Notice of Dispute Resolution Proceeding package (the "Notice") on the Landlord by way of Canada Post registered mail, mailed on April 23, 2018. The Tenant submitted into evidence a copy of the Canada Post registered mail receipt, the tracking number, and a photograph of the package next to the receipt and tracking number. The Landlord did not pick up the Notice, as the Notice was returned as unclaimed. The Tenant testified that they sent a follow up text message and an email to the Landlord requesting confirmation that they had received the Notice. The Landlord did not respond.

Section 89 (1) of the Act requires a party to serve an application for dispute resolution by one of five methods. One method, section 89 (1) (c), permits a party to send a copy of the application "by registered mail to the address at which [. . .] the person carries on business as a landlord." The Tenant submitted into evidence a copy of the written

tenancy agreement, which lists the address of the rental unit as the address for service of the Landlord.

Section 90 (a) of the Act states that a person is deemed to have received a document sent by registered mail on the fifth day after it was mailed.

Residential Tenancy Policy Guideline 12 – Service Provisions (pages 11-12) states that when a document is served by registered mail, “the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.”

Applying the law to the facts, I find that the Tenant served the Landlord with the Notice pursuant to section 89 (1) of the Act, and that the Landlord is deemed to have received the Notice on April 28, 2018.

Issues

1. Is the Tenant entitled to a monetary order for compensation from the Landlord?
2. Is the Tenant entitled to a return of their security deposit?
3. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant testified that they entered into a fixed term tenancy for the rental unit commencing November 15, 2017, and ending April 30, 2018. Rent was \$1,400.00, due on the first of the month, and the Tenant paid a security deposit of \$700.00.

The Tenant submitted into evidence a copy of their bank statement which reflects an Interact transfer payment of \$700.00 to the Landlord on November 3, 2017. The transaction description reads “Retrait - Virement Interac à: / [Landlord’s full name] /DD”.

The Tenant gave notice to vacate the rental unit by way of text message on December 8, 2017. The parties then had a text message conversation during which they agreed to a move out date of December 15, 2018. On December 12, the Tenant texted the Landlord asking “Okok could we work a way so I get my deposit back?” to which the Landlord responds, “Ya ill need to finalize someone first \$ wise...”

On February 6, 2018, the Tenant sent the Landlord their forwarding address by registered mail, and included the tracking number. The mail was returned unclaimed.

The Tenant also submitted into evidence a copy of their bank statement which reflected the Tenant's making a transfer to the Landlord on December 1, 2017 for \$800.00. The description for the transaction reads, "Retrait - Virement Interac à: / Lisa Brougham /Rent". On December 8, the Landlord sent a text message to the Tenant asking "Do you think you could etransfer me the rest of the rent \$ for the month today? Thx". The Tenant then confirms paying the remainder of the rent. However, because the Tenant and Landlord agreed to a move out date of December 15, the parties agreed that the Tenant would only have to pay rent for half the month (\$700.00), and that the Landlord ended up owing the Tenant \$100.00 for the difference. The Tenant texted the Landlord on December 15 asking, "Could you retransfer me 100\$ so I could have paid 1/2 month?" to which the Landlord replies "Yes can do". The Tenant testified that they have not received the \$100.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38 (1) of the Act reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) of (4) (a), within 15 days after the later of

- (a) the date the tenancy ends,
- (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.

Section 38 (6) states that where a landlord fails to comply with section 38 (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.

The Tenant testified, and submitted documentary evidence, that they sent the Landlord their forwarding address by way of registered mail on February 6, 2018. I find that the Landlord is deemed to have received the Tenant's forwarding address on February 11, 2018, pursuant to section 90 of the Act. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. The Landlord has not made an application for dispute resolution and has not returned the Tenant's security deposit.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to a monetary order for the return of the security deposit.

I further find that the Landlord has not complied with section 38 (1) of the Act and, pursuant to section 38 (6) (b), must pay the Tenant double the amount of the security deposit for a total of \$1,400.00.

Section 67 of the Act permits me to order that a party pay another party compensation if damage or loss results from one party not complying with this Act, the regulations or a tenancy agreement.

The Tenant testified, and submitted documentary evidence, that the Landlord agreed to refund \$100.00 of the rent.

Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to compensation in the amount of \$100.00.

As the Tenant is successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee.

Pursuant to section 67 of the Act, I hereby grant a monetary award in the amount of \$1,600.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$1,600.00. This 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 Act.

Dated: June 8, 2018

Residential Tenancy Branch