



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution made on April 30, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks a return of a 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 May 2, 2018. The Tenant provided the tracking number. Canada Post tracking information indicates that the Notice was ready for pickup as of May 4, 2018.

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 testified that the address to which they sent the Notice is the address of service for 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 May 7, 2018.

Issues to be Decided

1. Is the Tenant entitled to a return of a security deposit?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant testified that they started a tenancy August 1, 2017, and ended the tenancy March 31, 2018. Monthly rent was \$725.00 and the Tenant paid a security deposit of \$362.50. (The Tenant did not submit a copy of a tenancy agreement into evidence.)

The parties agreed, on or before March 21, 2018, that the Landlord could keep \$75.00 of the security deposit to pay for a replacement key that the Tenant lost. The Tenant submitted into evidence two screenshots of a text conversation between the parties referencing this amount and the purpose. The Tenant confirmed that the security deposit amount for the purposes of this application is \$287.50.

The Tenant provided the Landlord with their forwarding address on April 6, 2018, and submitted into evidence a screenshot of a text conversation between the parties that substantiates the Tenant’s testimony.

On April 24, 2018, the Landlord sent a portion (\$160.00) of the security deposit to the Tenant, by Interac e-Transfer. The Tenant testified that the Landlord was late in providing a refund, and that the Landlord decided to keep a portion of the security deposit because of an outstanding bill. The Tenant rejected the transfer. The Tenant sent a final text message to the Landlord on April 26, 2018, advising them that they would file for dispute resolution due to the failure of the Landlord to return the security deposit.

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, "Return of security deposit and pet damage deposit" states:

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 supporting documentary evidence, that the Landlord received the Tenant's forwarding address on April 6, 2018. Further documentary evidence submitted by the Tenant demonstrates that the Landlord was aware of their obligation to return the security deposit and did so only after the 15 days, and for a greatly reduced amount. There is no evidence to suggest that the Landlord applied for dispute resolution within 15 days of receiving the forwarding address.

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 \$575.00.

I grant the Tenant recovery of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I grant a monetary order in the amount of \$675.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$675.00. This Order must be served on the Landlord, and 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 Act.

Dated: June 11, 2018

Residential Tenancy Branch