



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 21, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on November 24, 2017 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On June 14, 2018 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on June 14, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter

The Landlord was not permitted to give evidence regarding damage to the rental unit, as the Landlord has not filed a claim for compensation for damage and, therefore, that matter is not relevant to the issue in dispute at these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$1,100.00 was paid on November 27, 2013;
- the Tenant also paid a fob deposit of \$75.00;
- this tenancy ended on November 01, 2017;
- the Tenant provided a forwarding address to the Landlord, in writing, on November 02, 2017;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit;
- the Landlord offered to return the security deposit, but not until after the fifteen day deadline for returning it had passed; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord

did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

As the Landlord submitted no evidence that he was entitled to retain the fob deposit of \$75.00, I find that amount must also be returned to the Tenant. The fob deposit is not a security deposit and is not, therefore, subject to the doubling provisions of section 38(6) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$2,375.00, which includes double the security deposit, the return of the fob deposit, and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: July 21, 2018

Residential Tenancy Branch