



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 1, 2017 (the "Application"). The Tenant applied for an order that the Landlord return all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord attended the hearing at the appointed date and time. Both parties provided affirmed testimony.

The Tenant testified that the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail. The Tenant acknowledged receipt. No further issues were raised with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served 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.

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

The parties agreed the tenancy began on July 1, 2012. The tenancy ended on November 5, 2017, at which time the Tenant vacated the rental unit. Rent in the amount of \$1,000.00 was due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00. Although a portion of the security deposit has been returned, the Landlord retained \$225.75 on account of unpaid rent.

The Tenant sought to recover \$225.75, which is the balance of the security deposit retained by the Landlord. The Tenant testified she received a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 7, 2017 (the "Two Month Notice"). The effective date on the Two Month Notice was indicated as November 9, 2017. The Tenant vacated the rental unit on November 5, 2017.

It was not disputed that the Landlord returned \$1,274.25 to the Tenant. A copy of a cheque dated November 15, 2017, was submitted in support. According to calculations submitted by the Landlord, this was comprised of \$1,000.00 in compensation, and the security deposit less unpaid rent from November 1-7, 2017 ($\$500.00 - \$225.75 = \$274.25$). The unpaid rent of \$225.75 was calculated on a pro-rated basis, assuming there are 31 days in November.

The Tenant testified further that she left her forwarding address in the rental unit when she vacated on November 5, 2017. The Landlord testified he received it on November 7, 2017, when he discovered the Tenant had vacated the rental unit.

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 keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving 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. The language in the *Act* is mandatory.

In this case, I find the Tenant provided the Landlord with a forwarding address in writing, which was discovered by the Landlord on November 7, 2017. Accordingly, the Landlord had until November 22, 2017, to repay the deposit, in full, or file an application for dispute resolution. The Landlord did neither. Rather, the Landlord arbitrarily retained \$225.75 for unpaid rent. Pursuant to section 38(6) of the *Act*, I find the Tenant has demonstrated an entitlement to double the amount of the deposits held by the Landlord.

Policy Guideline #17(C) provides assistance when determining a tenant's right to the return of the security deposit when part of it has already been returned to the tenant. 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 a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit (\$400 x 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.]

Accordingly, I find the Tenant has demonstrated an entitlement to a monetary award of \$725.75, which has been calculated in accordance with Policy Guideline #17(C) as follows:

$$\$500.00 \times 2 = \$1,000.00$$

$$\$1,000.00 - \$274.25 = \$725.75$$

Further, having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, the Tenant is granted a monetary order in the amount of \$825.75.

The Landlord remains at liberty to file a claim against the Tenant for any losses they feel they have suffered as a result of the tenancy.

Conclusion

The Tenant is granted a monetary order in the amount of \$825.75. 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: July 18, 2018

Residential Tenancy Branch