



Dispute Resolution Services

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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 June 25, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant sought monetary orders for the return of his security and pet damage deposits and for the recovery of the filing fee, pursuant to sections 38(1) and 72(1) of the Act, respectively.

A dispute resolution hearing was convened at 1:30 p.m. on October 25, 2018. The tenant attended the hearing 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.

The tenant testified that he served the landlord with a Notice of Dispute Resolution Proceeding package (the "Notice") by Canada Post registered mail on June 28, 2018. He sent a copy of the Notice to both the landlord's address in Edmonton as listed on a Condition Inspection Report, and to the address of the rental unit, which the landlord owns. The tenant submitted into a copy of the Canada Post registered mail receipt and tracking number. Having mailed the Notice on June 28, 2018, the Notice is deemed to have been received on the fifth day after it was mailed, namely, on July 3, 2018, pursuant to section 90(a) of the Act.

As stated in *Residential Tenancy Policy Guideline 12 – Service Provisions* on page 12, where 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.

Based on the undisputed oral and documentary evidence of the tenant, I find that he properly served the landlord with the Notice pursuant to section 89(1)(c) of the Act.

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.

Issues

1. Is the tenant entitled to a monetary order for the return of his security and pet damage deposits?
2. Is the tenant entitled to a monetary order for the recovery of the filing fee?

Background and Evidence

The tenant testified that he commenced tenancy on July 1, 2016 and that the tenancy ended on June 1, 2018. Monthly rent, due on the first of the month, was in the amount of \$1,900.00, later increased to \$1,950.00. The tenant paid a security deposit in the amount of \$950.00 and a pet damage deposit in the amount of \$950.00.

At the end of the tenancy, the tenant provided his forwarding address to the landlord in a Condition Inspection Report (which was submitted into evidence by the tenant) and again in a letter mailed to the landlord on June 11, 2018, in which the tenant requested the return of his security and pet damage deposits. He was, however, unsuccessful in obtaining a return of the deposits from the landlord.

Finally, the tenant confirmed that there was no written agreement between the parties permitting the landlord to retain any, or all, of the security and pet damage 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. In this case, the tenant is making a claim for compensation for the return of his security and pet damage deposits.

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

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.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, I find that the tenant has established on a balance of probabilities that the landlord received the tenant's forwarding address in writing both at the end of the tenancy and again on June 11, 2018. Further, there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits. Finally, there is no evidence before me to find that the tenant consented in writing to the landlord retaining any of the deposits.

Taking into consideration all the oral and documentary evidence and undisputed testimony of the tenant, I find that the landlord did not comply with section 38(1) of the Act, and as such I grant the tenant a monetary award for the return of his security and pet damage deposits.

Section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord breached the Act by failing to return the security and pet damage deposits in compliance with section 38(1) of the Act, I therefore order that the landlord must pay the tenant double the amount of the security and pet damage deposits for a total of \$3,700.00.

As the tenant was successful in his application, I grant him a monetary award in the amount of \$100.00 for the recovery of the filing fee.

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$3,800.00.

Conclusion

I hereby grant the tenant a monetary order in the amount of \$3,800.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding, except as otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 25, 2018

Residential Tenancy Branch