



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

The tenant filed an application for dispute resolution on June 17, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”). The tenant seeks the following relief under sections 38(1)(c) and 67 of the Act: (1) an order of compensation for the return of her security deposit; and (2) an order of compensation for a partial rent refund.

The tenant attended the hearing before me, 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 she served the Notice of Dispute Resolution Proceeding package (the “package”) by way of Canada Post registered mail on June 20, 2018. She mailed the package to the landlord’s address for service as listed in the written tenancy agreement. The package was unclaimed by the landlord and returned to the sender.

Pursuant to Residential Tenancy Policy Guideline 12, “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 has served the landlord with the package 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. This is my decision in respect of the tenant’s application.

Issues to be Decided

1. Is the tenant entitled to an order of compensation for the return of her security deposit?
2. Is the tenant entitled to an order of compensation for a partial rent refund?

Background and Evidence

The tenant testified that she moved into the rental unit (and the tenancy began) on October 15, 2017, and that she moved out on January 30, 2018. Monthly rent was \$695.00, and she paid a security deposit in the amount of \$350.00. A copy of the written tenancy agreement was submitted into evidence.

The tenancy agreement between the tenant and landlord stipulated that the parties could mutually end the tenancy at any time provided that the tenant ensured that there was another tenant that could immediately take over after the tenant vacated the rental unit. The tenant ultimately found a new tenant to take over the rental unit, and this tenant commenced a new tenancy on January 15, 2018. According to the tenant, and based on the tenancy agreement between the parties, the landlord owes the tenant a refund of rent for the period January 15 to January 30, 2018, which is the period for which the new tenant paid rent.

The tenant emailed the landlord's wife on January 9, 2018 and provided the landlord's wife with the tenant's forwarding address. To ensure that the landlord in fact received the tenant's forwarding address, the tenant later sent her forwarding address to the landlord by way of registered mail on May 2, 2018.

To date, the landlord has not returned either the partial rent refund or the security deposit. Further, there is no evidence suggesting that the landlord filed an application for dispute resolution claiming against 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 or about January 9, 2018. 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 \$700.00.

As an aside, I note that a \$350.00 security deposit on rent of \$695.00 exceeds an amount permitted by law. Section 19(1) of the Act states that a "landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement."

Regarding the tenant's claim for a partial refund in rent in the amount of \$350.00, taking into consideration all the evidence and unchallenged testimony of the tenant presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim that she is entitled to a monetary award of \$350.00 for a partial refund of rent.

Conclusion

I hereby grant the tenant a monetary order in the amount of \$1,050.00, which must be served on the landlord. The order may be filed in the Provincial Court of British Columbia and enforced as a judgment or an order of that court.

This decision is final and binding on the parties, unless otherwise provided 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: September 25, 2018

Residential Tenancy Branch