



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 26, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return the Tenant's personal property;
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by W.G.D., an advocate. The Landlord attended the hearing on his own behalf. All in attendance provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The Landlord did not submit documentary evidence in response to the Application.

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.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed a fixed-term tenancy began on July 1, 2017, and was to continue to July 31, 2018. However, the Tenant vacated the rental unit on or about May 31, 2018. During the tenancy, rent in the amount of \$2,700.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,350.00, which the Landlord holds.

First, the Tenant requested an order that the Landlord return her personal property. Specifically, W.G.D. testified the Landlord found the Tenant's iPad in the rental unit after the Tenant vacated and has not returned it. W.G.D. referred to a translated document describing communications between the Tenant and the Landlord, in which it appears the Landlord demanded payment of \$5,725.00 for damage before returning the iPad.

In reply, the Landlord acknowledged the iPad has not been returned but testified the Tenant has not come to pick it up.

Second, the Tenant requested a monetary award in the amount of \$2,700.00 for the return of double the amount of the security deposit. In support, the Tenant submitted a copy of a letter dated June 19, 2018, requesting the return of her iPad and security deposit. The letter included the Tenant's forwarding address. According to W.G.D., the letter was sent to the Landlord by registered mail on that date.

The Landlord acknowledged receipt of the letter by registered mail. However, the Landlord testified that he held the deposit because he wanted the Tenant to sign a document confirming damage to the rental unit, which he says was caused during the tenancy.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenant's request for an order that the Landlord return her personal property, section 65(1) of the *Act* empowers the director to order that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned.

During the hearing, the Landlord acknowledged that the Tenant's iPad has not been returned but that he does not object to returning it. Accordingly, I order the Landlord to return the iPad to the Tenant. The Tenant is ordered to contact the Landlord to propose reasonable dates and times to collect the iPad. The Landlord is ordered to take reasonable steps to accommodate the Tenant's proposals. The iPad should be returned to the Tenant by November 23, 2018. If the Landlord fails to return the iPad to the Tenant in accordance with these orders, the Tenant is at liberty to apply for additional compensation for losses related to the Landlord's failure to comply with the orders.

With respect to the Tenant's request for a monetary order for \$2,700.00, Section 38(1) of the *Act* requires a landlord to repay deposits or make 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 that the Tenant provided the Landlord with her forwarding address in a letter dated June 19, 2018. The letter was sent to the Landlord by registered mail on that date. The Landlord acknowledged receipt of the letter by registered mail during the hearing. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. Therefore, I find the Landlord is deemed to have received the Tenant's forwarding address in writing on June 24, 2018. However, the Landlord has not returned the security deposit or made a claim against it by filing an application for dispute resolution. Therefore, I find the Tenant entitled to double the amount of the security deposit, or \$2,700.00. Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the tenant is entitled to a monetary order in the amount of \$2,800.00, which is comprised of \$2,700.00 for double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

I order the Landlord to return the iPad to the Tenant. The Tenant is ordered to contact the Landlord to propose reasonable dates and times to collect the iPad. The Landlord is ordered to take reasonable steps to accommodate the Tenant's proposals. The iPad should be returned to the Tenant by November 23, 2018. If the Landlord fails to return the iPad to the Tenant in accordance with these orders, the Tenant is at liberty to apply for additional compensation for losses related to the Landlord's failure to comply with the orders.

The Tenant is granted a monetary order in the amount of \$2,800.00. The monetary 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: November 6, 2018

Residential Tenancy Branch