



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on May 22, 2018, and on July 5, 2018, under the *Residential Tenancy Act* (the "Act"). In her application made on May 22, 2018, the tenant sought a monetary order for return of her security deposit and a monetary order for recovery of the filing fee. In her application made on July 5, 2018 (referred to as the "July 5 Application"), the tenant sought an administrative fine under section 95 of the Act.

The tenant and landlord attended the hearing before me and were given an opportunity to be heard, present testimony, make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Preliminary Issue: Application for an Administrative Fine under section 95 of the Act

For the reasons explained in my Interim Decision of August 9, 2018, the tenant's application of July 5, 2018 in which she sought an administrative fine under section 95 of the Act is hereby dismissed without leave to reapply.

As was also noted in my Interim Decision of August 9, 2018, the tenant is at liberty to write to the Director of the Residential Tenancy Branch should the tenant wish to pursue administrative penalties under this, or any other section of the Act.

Issues to be Decided

1. Is the tenant entitled to a monetary order for the return of her security deposit?
2. If yes, is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified that she commenced a tenancy on September 19, 2015. She vacated the rental unit on February 10, 2018. Monthly rent was in the amount of \$2,420.00 and she paid a security deposit of \$1,000.00. There was no pet damage deposit. A copy of a written tenancy agreement was submitted into evidence.

On around the end of the tenancy, the tenant tried on four or five inspections to do a move out inspection with the landlord. No move out inspection was every completed and no Condition Inspection Report was ever completed, or provided to the tenant.

The tenant further testified that she provided the landlord with her forwarding address a letter, put into the landlord's mailbox, on or about February 1, 2018, and that she also sent the landlord the forwarding address by text message on February 4, 2018.

The landlord testified that she is new to the business of being a landlord, and never completed anything in writing, such as a Condition Inspection Report. She further testified that, due to the extensive damage and repairs needing to be done to the rental unit at the end of, and after, the tenancy, she thought that the tenant would "be happy" that the landlord only kept the thousand-dollar security deposit.

The landlord's main focus after the tenant vacated the rental unit was getting the house back in order.

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 their security deposit.

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 (by both letter and by text message) on February 1 and February 4, 2018. There is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit.

Further, neither party testified as to whether there was any agreement in writing between the parties permitting the landlord to retain any amount from the security deposit. While the landlord may have thought that the tenant would "be happy" that she kept the security deposit, the landlord has a legal right to seek compensation under section 67 the Act. Simply keeping the security deposit is not permitted by the Act.

As such, taking into consideration all the oral and documentary evidence, I find that the landlord did not comply with section 38(1) of the Act, and I therefore grant the tenant a monetary award for the return of her security deposit.

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 failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenant double the amount of the security deposit for a total of \$2,000.00.

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

Conclusion

I hereby grant the tenant a monetary order in the amount of \$2,100.00, 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 16, 2018

Residential Tenancy Branch