



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant, as orally amended, for a Monetary Order for the return of the security deposit and compensation under Section 38 of the Act for double the deposit amount. The application is inclusive of an application for recovery of the filing fee for the application.

Both of the named parties to this matter attended today's hearing. The landlord acknowledged receiving the tenant's application and Notice of Hearing documents as well as their prior submissions of document evidence. The landlord acknowledged advancing their prior submissions of evidence to this proceeding, however did not provide their evidence to the tenant. As a result, the landlord was apprised I could not consider their submissions. None the less, both parties were provided opportunity to present any relevant evidence in testimony, present witnesses, ask questions to each other or to me and make oral submissions. The parties were also provided ample opportunity to discuss their dispute with a view to settling all matters and issues of both parties, to no avail. I have considered all evidence, written and oral which meets the requirements of the Rules of Procedure.

Preliminary matters

The tenant orally withdrew their claim related to June 2018 rent in the amount of \$650.00; therefore this claim has not been considered and is preliminarily dismissed.

In respect to issues of procedural fairness in this matter it must be known that the landlord assertively sought to have considered their claim for relief (*unfiled*) purporting

to damage of the rental unit by the tenant, as well as for other compensation. The parties were apprised I could solely deal with the application before this hearing of the tenant and the reasons for it, in part; a party's right to know of a case against them by an application of a claim and associated evidence to the respondent, both absent in this case. The landlord was aptly apprised it was available for them to file their prospective application for relief, and have it heard before an Arbitrator. The hearing proceeded on the merits of solely the *tenant's application* before this hearing.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit and filing fee?

Background and Evidence

The undisputed relevant evidence of the parties before me is as follows. The tenancy began November 01, 2017 as a fixed term tenancy agreement and since ended early with the tenant ultimately vacating on June 14, 2018. The payable rent under the agreement was \$1300.00 payable in advance on the 1st. of every month. The landlord collected a security deposit of \$650.00 at the outset of the tenancy which the landlord retains in trust. At the outset of the tenancy the landlord and tenant conducted a mutual move in inspection in accordance with the Act. The landlord did not conduct a mutual move out inspection at the end of the tenancy as required by the Act. The parties agree the landlord received the tenant's forwarding address on July 11, 2018.

The relevant disputed evidence is as follows. The landlord testified they understood from an e-mail communication from the tenant that they were at liberty to retain the security deposit. The landlord and tenant each read out loud the subject e-mail dated May 03, 2018 within which the tenant purportedly agreed to relinquish the security deposit. It states,

(landlord)

I'd like to confirm the details of our conversation on Tuesday. You are okay with me

moving out on June 1, is that correct? I am fine with paying rent longer, though I will be moving on that day. As mentioned, I spoke with B____ P____ at H____ & M____ and he advised that their fee is 65% of one month's rent, which I'm happy to pay if you're going to use them again. I posted a notice on the electronic marketplace at work to see if someone at the City is interested in renting the condo. – as written

The tenant testified they did not agree to the landlord keeping the security deposit at the end of the tenancy. The tenant requested return of their deposit, and the landlord determined to retain it.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the relevant evidence for this matter, I find as follows.

In respect to the above reproduced e-mail of the tenant dated May 03, 2018, I do not accept the e-mail contains any element of agreement by the tenant allowing the landlord to retain the security deposit.

I find that **Section 38(1)** of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) **file an application** for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on July 11, 2018 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$650.00 and was obligated under Section 38 to return this amount. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1300.00 and is further entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$1400.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1400.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: December 19, 2018

Residential Tenancy Branch