



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 29, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and

The hearing was scheduled for 1:30 pm on December 21, 2018, as a teleconference hearing. B.A. attended the hearing on behalf of the Tenant. The Landlord joined the telephone conference seven minutes after it began. Both parties provided affirmed testimony.

B.A. testified the Application and documentary evidence package was served on the Landlord by registered mail. A copy of the Canada Post registered mail receipt was submitted in support. 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.

Preliminary Matters

The Tenant submitted an application for dispute resolution, seeking the return of her security and pet damage deposits in the amount of \$700.00. The monetary amount listed in the Application was \$1,176.00. B.A. testified that the Tenant was also seeking a return of her rent for the month of May 2018 for the balance of the month following the end of tenancy date of May 11, 2018. The Tenant has only applied for the return of their security deposit and no other monetary relief. For this reason, only evidence relating to return of the security and pet damage deposits will be considered 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?

Background and Evidence

The parties were both uncertain as to the exact start of the tenancy. B.A. testified that the tenancy began around three years ago, while the Landlord testified that it started five years ago. Both parties agree that the tenancy ended on May 11, 2018, following a large flood in the region. During the tenancy, rent was due in the amount of \$700.00 per month. The Tenant paid a security deposit of \$350.00 and a pet damage deposit of \$350.00, which the Landlord hold.

B.A. testified that the Tenant provided the Landlord with her forwarding address in writing, which was sent to the Landlord on October 4, 2018 by regular mail. A copy of this letter was submitted into evidence by the Tenant. The Landlord confirmed having received the Tenant's forwarding address around that time.

The Landlord testified that after receiving the forwarding address, she did not return the security deposit or the pet damage deposit to the Tenant, nor did she submit an application for dispute resolution. The Landlord testified that she could not afford to return the deposits to the Tenant following the flood in the area.

Analysis

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

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 comply with section 38(1) of the *Act*, section 38(6) stipulates that a Tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage Landlords from arbitrarily retaining deposits.

In this case, I find the Tenant provided the Landlord with her forwarding address in writing by regular mail on October 4, 2018. In the absence of evidence to the contrary, based on the written submissions of the Tenant and in accordance with section 89 of the *Act*, I find that the Landlord is deemed to have been served on October 9, 2018, the fifth day after its mailing.

Accordingly, pursuant to section 38(1) of the *Act*, the Landlords had until October 24, 2018, to repay the deposits or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit and pet damage deposit held by the Landlord, or \$1,400.00.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,400.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,400.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: January 2, 2019

Residential Tenancy Branch