



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on October 4, 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
- an order granting recovery of the filing fee.

The Tenant attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified that the Landlord was served with the Application package by registered mail on October 9, 2018. The Tenant testified the Application package was sent to the Landlord's address for service indicated on the written tenancy agreement between them. A Canada Post customer receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Landlord on October 14, 2018.

The Tenant was given a full 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 recover the filing fee?

Background and Evidence

The Tenant testified the brief tenancy began on July 15, 2018, and ended on September 1, 2018. During the tenancy, rent was due in the amount of \$850.00 per month. The Tenant paid a security deposit of \$425.00, which the Landlord holds.

The Tenant claims \$850.00 for the return of double the amount of the security deposit under section 38 of the *Act*. The Tenant testified the Landlord was provided with a forwarding address in writing via post on September 13, 2018. A copy of the type-written letter was submitted into evidence. According to the Tenant, the letter was sent to the Landlord's address for service indicated in the written tenancy agreement between them. However, the Tenant testified that the Landlord has not repaid the security deposit to him.

The Tenant also claimed \$100.00 in recovery of the filing fee.

The Landlord did not attend the hearing to dispute the Tenant's evidence.

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 an application to keep them by making 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.

In this case, the Tenant testified that the forwarding address in writing was sent to the Landlord via post on September 13, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received the Tenant's forwarding address in writing on September 18, 2018. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until October 3, 2018, to repay the deposit or to make a claim against it. The Landlord does not appear to have done either. Therefore, pursuant to section 38(6) of the *Act*, I find that the Tenant is entitled to recover double the amount of the security deposit, which is \$850.00. 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 grant the Tenant a monetary order in the amount of \$950.00, which is comprised of \$850.00 for the return of double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$950.00. 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: February 1, 2019

Residential Tenancy Branch