



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DANNY'S INN LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on November 20, 2018 (the "Application"). The Tenant applied for an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing and was accompanied by S.M., a legal advocate. The Landlord was represented at the hearing by T.F., an agent. The Tenant and T.F. provided affirmed testimony.

On behalf of the Tenant, S.M. stated that the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. On behalf of the Landlord, T.F. testified the Tenant was served with the Landlord's documentary evidence by registered mail. S.M. acknowledged receipt on behalf of the Tenant. During the hearing, neither party raised any issue with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. 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

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 agreed the tenancy began on May 1, 2013, and ended on September 29, 2017. They agreed further that rent was due in the amount of \$575.00 per month. Although the Tenant indicated that he paid a security deposit in the amount of \$277.50, T.F. confirmed that the actual amount of the security deposit held is \$375.00.

During the hearing, the Tenant confirmed that his forwarding address was provided to the Landlord in writing in a letter dated October 6, 2017. A copy of the letter was submitted into evidence.

In reply, T.F. testified that she received the letter but must have misplaced it, perhaps as a result of her mother's death. T.F. also advised that the Tenant "destroyed" the rental unit and that she paid thousands of dollars for repairs. T.F. feels that the Tenant and his advocate are "coming after" her unjustly.

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 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. This provision is intended to discourage landlords from retaining deposits arbitrarily.

In this case, I find the Tenant provided his forwarding address to the Landlord in the letter dated October 6, 2017. T.F. acknowledged receipt of the letter. Therefore, the Landlord had until October 21, 2017, to repay the security deposit or make a claim against it by filing an application for dispute resolution. However, T.F. confirmed the security deposit was not repaid to the Tenant because the letter containing the Tenant's forwarding address was misplaced and the extensive damage the Tenant caused to the rental unit.

As the parties were advised during the hearing, the condition of the rental unit at the end of a tenancy is not a relevant consideration upon hearing an application for the return of security and pet damage deposits. A landlord who experiences losses caused by a tenant during a tenancy may seek compensation from a tenant by applying for dispute resolution. A landlord may also apply to retain a security deposit or pet damage deposit in partial satisfaction of the claim. A party must make an application for dispute resolution within 2 years after the date the tenancy ends. In this case, the Landlord has not yet done so.

After careful consideration of the above, and pursuant to section 38 and 67 of the Act, I find the Tenant is entitled to recover double the amount of the security deposit held, or \$750.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$750.00. 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: March 19, 2019

Residential Tenancy Branch