



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNSD
 Landlord: MNRL FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on November 18, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit and/or pet damage deposit.

The Landlord’s Application for Dispute Resolution was made on December 4, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for rent and/or utilities; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. The parties were unsure of the exact dates of service, however, each of them expressed a desire to proceed with the applications. No issues were raised with respect to service or receipt of these

documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order granting the return of all or part of the security deposit or pet damage deposit pursuant to Section 38 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting the recovery of the filing fee pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on January 1, 2018 and ended on November 4, 2018. During the tenancy, rent in the amount of \$1,600.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 which the Landlord currently holds.

The Tenant's Claim

The Tenant sought the return of the security deposit in the amount of \$500.00. The Tenant testified that she provided the Landlord with her forwarding address in writing on October 25, 2018. The Landlord confirmed receipt. The parties agreed that the Tenancy ended on November 4, 2018. The Tenant submitted a copy of their forwarding address into evidence.

Landlord's Claim

The Landlord stated that she became the Administrator of her father's estate in September 2018. The Landlord testified that she did not receive any rent from the Tenant when due for September and October 2018.

The Landlord stated that she served the Tenant a 10 Day Notice for Unpaid Rent and Utilities (the "10 Day Notice") dated October 25, 2018 with an effective vacancy date of November 5, 2018. The 10 Day Notice indicates that the Tenant had failed to pay rent in the amount of \$3,200.00

The Landlord is seeking the return of the unpaid rent in the amount of \$3,200.00. The Landlord provided a rental ledger confirming that the rent was unpaid in September and October as well as rent receipts from February to August 2018 confirming that rent was paid in each of those months.

In response, the Tenant agreed that she did not pay rent to the Landlord, however, the Tenant indicated that she overpaid the previous Landlord in August 2018 in the amount of \$3,000.00. The Tenant stated that she wished to apply the overpayment to the current outstanding rent. The Tenant stated that she is willing to pay the extra \$200.00 to the Landlord in relation to their claim.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Tenants' Claim

With respect to the Tenant's claim for \$500.00 for recovery of the security deposit, 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. If a landlord fails to repay deposits or make a claim against them within 15 days after receipt of a tenant's forwarding address, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, I find the Tenant provided the Landlord with their forwarding address in writing, which was received by the Landlord on October 25, 2018. The parties agreed that the Tenancy ended on November 5, 2018. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until November 20, 2018, to repay the deposit or make a claim against it. However, the Landlord did not make a claim against the security deposit until December 4, 2018 and has not returned any part of the deposit to the

Tenant. Accordingly, I find the Tenant is entitled to the return of double the amount of the deposits, or \$1,000.00.

The Landlord's Claim

The Landlord is seeking a monetary order in the amount of \$3,200.00 for unpaid rent. Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

The Landlord submitted copies of previous rent receipts confirming rent payments made by the Tenant to the Landlord each month, dating back to February 2018. I find that the Landlord has established a consistent pattern of providing the Tenant with a rent receipt following payments of rent. The Landlord provided a copy of the rental ledger as well as the 10 Day Notice dated October 25, 2018, confirming that rent in the amount of \$3,200.00 was unpaid for September and October 2018.

The Tenant testified that she overpaid the previous Landlord in August 2018 in the amount of \$3000.00. I find that the Tenant did not provide any documentary or other evidence to support this testimony. The Landlord submitted receipts and a ledger which contradicts the Tenant's verbal testimony. I find it is more likely than not that the Tenant failed to pay rent in the amount of \$3,200.00.

I find that the Landlord has established an entitlement to the return of \$3,200.00 for unpaid rent in September and October 2018.

As the Landlord was successful in their Application, I find that the Landlord is entitled to the recovery of their filing fee in the amount of \$100.00

Set-off of Claims

The Tenant has demonstrated an entitlement to a monetary award of \$1000.00. The Landlord has demonstrated an entitlement to a monetary award of \$3,300.00.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Landlord with a monetary order in the amount of \$2,300.00 (\$3,300.00 - \$1,000.00).

Conclusion

The Landlord is granted a monetary order in the amount of \$2,300.00. The monetary should be served on the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (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 8, 2019

Residential Tenancy Branch