



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 20, 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;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing, and provided affirmed testimony.

The Tenant testified the Application and documentary evidence package were served on the Landlord by registered mail on November 22, 2018. The Landlord confirmed receipt. The Landlord testified that she served her documentary evidence on February 11, 2019 by placing the package in the Tenant's mailbox. The Tenant confirmed receipt. Based on the oral and written submissions of the parties, and in accordance with sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to section 67 of the *Act*?
3. Is the Tenant entitled to an order granting 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 began on May 27, 2018 and ended on October 31, 2018. During the tenancy, rent was due in the amount of \$700.00 per month. A security deposit of \$350.00 was paid to, and is currently being held by the Landlord. The parties submitted a copy of the tenancy agreement in support.

The Tenant testified that she provided the Landlord with written notice to end tenancy on October 13, 2018 via email. The Tenant stated that the notice indicated that she intended to vacate the rental unit on October 31, 2018. The Tenant requested that the Landlord return the security deposit to the Tenant's forwarding address listed in the notice. The Landlord confirmed receipt. The Tenant submitted a copy of the notice in support.

Both parties agreed that the tenancy ended on October 31, 2018. The Tenant stated that she has not yet received her security deposit as requested, and has not consented to the Landlord retaining any amount.

In response, the Landlord indicated that she felt justified in retaining the Tenant's security deposit as the Tenant did not provide sufficient notice to end the tenancy. The Landlord stated that she has not made an application to retain the security deposit and has not returned the Tenant's security deposit.

The Tenant is seeking a monetary order to compensate her double the security deposit in the amount of \$700.00. If successful, the Tenant is also seeking the return of the filing fee paid for the Application.

Analysis

Based on the documentary evidence before me for consideration 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*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, 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, the parties agreed that the Tenant provided the Landlord with her forwarding address by email on October 13, 2018 before vacating the rental unit on October 31, 2018.

As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until November 15, 2018, to repay the deposit or make an application for dispute resolution. The Landlord testified that she did neither. Therefore, I find that the Landlord breached Section 38 of the *Act*.

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 paid to the Landlord.

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 find the Tenant is entitled to a monetary order in the amount of \$800.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$800.00. The order should be served as soon as possible and 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