



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 13, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- 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 and the Landlords attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified the Application package was served on the Landlords by registered mail. The Landlords acknowledged receipt. Further, the Landlords testified their documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above 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 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 a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to the return of the security deposit and/or pet damage deposit?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on February 1, 2015, and ended on October 15, 2018. Further, the parties agreed that rent was due in the amount of \$993.63 per month at the end of the tenancy, and that the Tenant paid a security deposit of \$900.00, which is held by the Landlords.

The Tenant's claim was set out in a Monetary Order Worksheet, dated November 13, 2018. First, the Tenant claimed \$496.60. The Tenant testified that the Landlord offered to return one half of the rent paid for October 2018. In support, the Tenant submitted a copy of email correspondence. In an exchange on October 7, 2018, the Landlord stated: "I would like to return to you half of the rental payment you gave for Oct." It appears this was offered to the Tenant so the Landlords could "do final repairs/painting as needed at the end of oct." The Tenant accepted and confirmed the rental unit would be ready for cleaners the following Tuesday.

When given an opportunity to respond, the Landlords did not dispute this aspect of the Tenant's claim.

Second, the Tenant claimed \$900.00 for the return of the security deposit. He testified that he provided J.K. with a forwarding address in writing via text message on October 25, 2018. A screen print of the text message was provided with the Tenant's documentary evidence. The screen print confirmed a previous exchange between the Tenant and J.K.

In reply, J.K. confirmed his belief that the Tenant did send the text message. However, J.K. testified that he did not receive the text message. He testified he left the country on October 26, 2018, and did not return until early December 2018.

M.K. testified that the Tenant did not participate in a move-out condition inspection, and did not provide him with a forwarding address directly. Rather, he stated he did not receive the Tenant's forwarding address in writing until November 16, 2018, when the Application package was received.

Further, M.K. testified that he met with the Tenant on November 8, 2018. At that meeting, he presented the Tenant with a list of costs incurred due to the condition of the rental unit at the end of the tenancy. He testified these costs exceeded the sum of the rent payment to the Tenant described above and the amount of the security deposit held. However, M.K. stated that the Tenant disagreed with the Landlords' list and subsequently made the Application. Although the Landlords did not submit an application for dispute resolution, they testified to their belief that the Tenant's claim would be considered in the context of their alleged losses.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

With respect to the Tenant's request for the return of \$496.60, the Landlords did not dispute this aspect of the claim. Therefore, I find the Tenant is entitled to a monetary award in the amount of \$496.60.

With respect to the Tenant's request for the return of the security deposit, section 38(1) of the *Act* confirms a landlord has 15 days after receipt of a tenant's forwarding address in writing to repay any deposits held or apply to keep them by making an application for dispute resolution. Section 38(6) of the *Act* stipulates that failure to do so creates an obligation on the landlord to pay double the amount of the deposit held to the tenant. The language in the *Act* is mandatory.

In this case, the Tenant testified he provided J.K. with his forwarding address in writing via text message on October 25, 2018. A screen print of the text message was submitted into evidence. The screen print confirmed that the Tenant and J.K. had previously has used text messaging to communicate with regard to tenancy matters.

After consideration of the evidence and submissions of the parties, I find it is more likely than not that the Tenant provided J.K. with his forwarding address in writing via text message on October 25, 2018. Therefore, the Landlords had until November 9, 2018, to return the deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlords did neither. Further, I note that the Landlords' travel plans do not relieve them of their obligations under section 38 of the *Act*, and I find there was no obligation on the Tenant to provide a forwarding address to both Landlords using more than one method of communication. As the documentary evidence submitted demonstrates, electronic communication tools such as email and text messaging are frequently relied upon by landlords and tenants. I find it was sufficient that the Tenant provided a forwarding address to J.K. via a text message which had previously been used to deal with tenancy matters. Therefore, pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit, or \$1,800.00.

Having been successful, I 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 \$2,396.60, which has been calculated as follows:

Claim	Amount
Rent payment (agreed):	\$496.60
Security deposit (double):	\$1,800.00
Filing fee:	\$100.00
TOTAL:	\$2,396.60

If the parties require further information about their rights and obligations as landlords and tenants under the Act, information officers at the Residential Tenancy Branch are available to assist from Monday to Friday between 9:00 a.m. and 4:00 p.m. – tel: 1-800-665-8779 / email: HSRTTO@gov.bc.ca.

Conclusion

The Tenant is granted a monetary order in the amount of \$2,396.60. The monetary order 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 18, 2019

Residential Tenancy Branch