



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 29, 2018, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for the return of the security deposit.

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

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on December 7, 2018. The Landlord confirmed receipt. The Landlord testified that she served the Tenant with her documentary evidence by registered mail on March 6, 2019. The Tenant confirmed receipt. Pursuant to section 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to Sections 38 and 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2012. During the tenancy, rent in the amount of \$1,200.00 was due to the Landlord each month. The Tenant paid a security deposit in the amount of \$550.00 which the Landlord continues to hold. The tenancy ended on July 1, 2018.

The Tenant testified that she provided the Landlord with her forwarding address in writing by leaving it in an envelope along with the keys to the rental unit in the Landlord's mailbox on July 9, 2018. The Tenant stated that she also provided the Landlord with her forwarding address via text on July 9, 2018. The Tenant provided a copy of the text communication between the parties in support.

The Landlord denied receiving the Tenant's forwarding address in writing, however, confirmed that she did receive the Tenant's text containing her forwarding address on July 9, 2018. The Landlord stated that she made an application on July 27, 2018 to retain the Tenant's security deposit. The Landlord stated that she decided to withdraw her application prior to the hearing due to health reasons. The Landlord stated that she continues to retain the Tenant's security deposit to repair some alterations the Tenant made to the rental unit as well as some damage caused by the Tenant.

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 comply with section 38(1) of the *Act*, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. In this case, the parties agreed that the Tenant provided the Landlord with her forwarding address by text on July 9, 2018. The Landlord confirmed receipt. While texting is not a method of service set out in the *Act*, I find that the forwarding address was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

Accordingly, pursuant to section 38(1) of the *Act*, the Landlord had until July 24, 2018, to repay the deposit or make an application for dispute resolution. The Landlord stated that she made an application on July 27, 2018, however, withdrew the application prior to the hearing. As a result, I find that the Landlord did not meet the requirements set out in Section 38(1) 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 held by the Landlord, or \$1,100.00.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,100.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,100.00. 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 25, 2019

Residential Tenancy Branch