



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FFT

Introduction

This hearing was convened in response to an application by the tenant for a monetary Order for the return of their security deposit, compensation pursuant to Section 51(1) and (2) of the Act and to recover the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant testified they served the landlord with the application for dispute resolution, Notice of Hearing and all of their evidence by registered mail sent on March 08, 2018 and that it was returned to the tenant as unclaimed. The tenant provided the Canada Post tracking information for the registered mail as reflected in the *style of cause* hearing notes (title page). I found that the landlord was properly served with notice of the claim against them, deemed by the Act to have received it 5 days after it was sent. The hearing proceeded in their absence on the merits of the tenants application.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to the monetary amount claimed pursuant to Section 51(2)?

Background and Evidence

The tenant's undisputed evidence is as follows.

I do not have benefit of the tenancy agreement of this matter, however, the tenant testified confirming they paid an \$800.00 security deposit at the start of the tenancy, despite a portion of their document evidence stating they had paid \$1200.00. The tenancy ended on June 02, 2018. The parties conducted a mutual start of tenancy condition inspection. The landlord did not conduct a move out condition inspection, but none the less returned \$400.00 to the tenant, "as that is all they had in cash". The parties did not agree that the landlord could retain the rest. The tenant testified that prior to vacating the rental unit they sent the landlord a signed letter by regular mail and

by e-mail on May 17, 2018 requesting their deposit and stating the tenant's forwarding address. To date the landlord has not returned all of the tenant's security deposit.

The tenant claims that the tenancy ended as a result of the landlord providing the tenant with a Landlord's Notice to End for landlord's use, but did not provide the Notice into evidence. On further questioning the tenant acknowledged that the landlord had provided the tenant with a letter advising them that they were moving back to British Columbia and would be occupying the rental unit. The tenant testified they did so and occupied the rental unit for 2 months and then re-rented it. The tenant confirmed the landlord had not issued the tenant a Section 49 Notice to End. I advised the tenant that a Notice not conforming to Section 52 of the Act in the approved form does not trigger the landlord's obligation to compensate the tenant, nor can the tenant rely on the remaining provisions pursuant to Section 51 for additional compensation.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of the evidence submitted, and on balance of probabilities, I find as follows:

I find that the tenant did not receive a **Section 49** Notice to End and as a result are not entitled to compensation under **Section 51** of the Act. Therefore, this portion of the tenant's claim is **dismissed**, without leave to reapply.

However, I find **Section 38(1)** of the Act provides that the landlord must return the deposits of the tenancy or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord is deemed by **Section 90** of the Act to have received the tenant's forwarding address in writing 5 days after the tenant mailed it to the landlord on May 17, 2018 (May 22, 2018). I find the landlord failed to repay all of the security deposit or make an application for dispute resolution within 15 days of the tenancy's end of June 02, 2018. As a result, the Act prescribes that pursuant to **Section 38(6)** the landlord **must** pay the tenant *double* the amount of the security deposit and pet damage deposit, as applicable.

The landlord currently holds \$400.00 of the tenant's deposits and I find that they are obligated under **Section 38** to repay *double* the original deposits amount of \$800.00. Therefore, I find the tenant is entitled to \$1600.00 from which I deduct the \$400.00

already returned to the tenant, for a net award in the amount of **\$1200.00**. As the tenant was successful in their application I further find they are entitled to recover their filing fee of \$100.00 for a sum award of **\$1300.00**.

I grant the tenant a Monetary Order under Section 67 for **\$1300.00**. If the landlord fails to satisfy this Order it may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in its compensable parts is granted.

This Decision is final and binding.

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: May 13, 2019

Residential Tenancy Branch