



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 5, 2019 (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; and
- an order granting recovery of the filing fee.

The Tenant's Representative A.H., as well as the Landlord, and the Landlord's Agent P.C., attended the hearing at the appointed date and time and provided affirmed testimony.

A.H. testified that the Tenant served their Application and documentary evidence package to the Landlord by registered mail on April 11, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenant with his documentary evidence by registered mail on April 23, 2019. A.H. 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 Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. 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 February 16, 2018. The Tenant paid rent in the amount of \$2,800.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,400.00 which the Landlord continues to hold. The tenancy ended on March 1, 2019.

A.H stated that following the end of the tenancy on March 1, 2019, the Tenant served the Landlord with their forwarding address in writing by registered mail on March 2, 2019. The Landlord confirmed receiving the Tenant's forwarding address on March 2, 2019. A.H. stated that the Tenant did not consent to the Landlord deducting any amount from the security deposit and that the Tenant has not yet received their security deposit from the Landlord.

In response, the Landlord testified that the Tenant had promised to repair some damage in the rental unit prior to the end of the tenancy. The Landlord stated that the Tenant verbally agreed to the Landlord retaining the security deposit. The Landlord stated that he was shocked to see the Tenant's request for the return of their security deposit on March 2, 2019. The Landlord stated that he has not made an application for dispute resolution for monetary compensation, however, has retained the Tenant's security deposit to repair damage caused to the rental unit as well as for cleaning.

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 Tenant vacated the rental unit on March 1, 2019 and provided the Landlord with their forwarding address by registered mail on March 2, 2019. The Landlord confirmed receipt on March 2, 2019.

A Landlord may only retain the security deposit under the authority of the Act, for example if the Landlord has an order from the branch allowing them to keep a security deposit under section 38(3), or if the Tenant has agreed in writing that the Landlord may keep it pursuant to section 38(4). 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 March 17, 2019, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

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, or \$2,800.00.

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 \$2,900.00.

Conclusion

The Landlord has breached Section 38 of the Act by not making an application to retain the Tenant's security deposit or return the full amount to the Tenant within 15 days permitted under the Act. The Tenant is granted a monetary order in the amount of \$2,900.00. The order 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: July 09, 2019

Residential Tenancy Branch