



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 6, 2019. The tenant provided testimony that a copy of the Canada Post Customer Receipt with the tracking number was provided as proof of service. The tenant stated that she did not serve the landlord with the submitted documentary evidence. I accept the undisputed evidence of the tenant and find that the landlord was properly served via Canada Post Registered Mail on May 6, 2019 as per section 89 of the Act. The tenant having failed to comply with the service provisions of section 88 of the Act, I find as such that the tenant's documentary evidence is excluded from consideration in this hearing.

The hearing took place over a 35 minute period in which I found it difficult at times to understand the tenant and that the tenant was unresponsive to the questions put to her. Discussions determined that the tenant's native tongue was mandarin and that her English skills were subpar. Extra time was spent explaining each question and answer between the Arbitrator and the tenant. I am satisfied however, that the tenant was clear in the evidence provided in her direct testimony.

At the conclusion of the hearing, the tenant confirmed her mailing address as per the filed application for dispute. The tenant also clarified that there was a typo in the spelling of the landlord's name on the Application. The second letter "v" should be a "c". As such, the landlord's first name shall be amended with this change.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant stated that the tenancy ended on March 31, 2019. A security deposit of \$500.00 was paid.

The tenant seeks a clarified monetary order for return of double the security deposit and recovery of the filing fee for \$1,100.00, for:

\$500.00	Return of Original Security Deposit
\$500.00	Compensation, Fail to Comply, Sec. 38(6)
\$100.00	Filing Fee

The tenant provided undisputed testimony that the landlord was provided with her forwarding address in writing for return of the \$500.00 security deposit on April 1, 2019. The tenant confirmed that she did not give permission to the landlord to retain it nor has the tenant been advised that the landlord has applied for dispute for returning it. As of the date of this hearing, the tenant has not received the \$500.00 security deposit from the landlord.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant and find that the landlord has failed to return the original \$500.00 security deposit to the tenant within the allowed 15 day time period. As such, I find that the tenant has established a claim for the \$500.00 security deposit.

I also find based upon the undisputed testimony of the tenant that the landlord having failed to return the original \$500.00 security deposit has contravened section 38(1) of the Act. The tenant did not give permission for the landlord to retain it nor has the landlord applied for dispute of its return. As such, the landlord is liable pursuant to section 38(6) to pay an amount equal to the \$500.00 security deposit to the tenant.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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: August 08, 2019

Residential Tenancy Branch