



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on July 19, 2019, wherein the Tenant sought return of her security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on October 28, 2019. Only the Tenant, her cousin, L.T., and her cousin's husband, H.T., called into the hearing. L.T. advised that the Tenant had limited command of the English language and therefore acted as the Tenant's agent and interpreter. L.T. gave affirmed testimony and was provided the opportunity to present the Tenant's evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:48 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and her representatives and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. L.T. testified that they served the Landlord with the Notice of Hearing and the Application on July 19, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. L.T. stated that approximately one month after the package was sent it was returned to the Tenant.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 24, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant's representative confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to return of her security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the draft residential tenancy agreement confirming that this tenancy was to begin July 1, 2019; the agreement was not signed by the Tenant. Pursuant to the agreement, monthly rent was \$800.00 and the Tenant paid a \$400.00 security deposit on June 12, 2019.

The Tenant did not move into the rental unit. She viewed the rental unit on June 12, 2019 and informed the Landlord on June 14, 2019 that she did not want to move in. On June 30, 2019 the Tenant informed the Landlord that she had changed her mind and

would like to move in; at that time the Landlord refused her entry to the rental unit as he had already rented it to another person.

On July 4, 2019 the Tenant sent her forwarding address to the Landlord by registered mail. A copy of the tracking number is also included on the unpublished cover page of this my Decision.

The Landlord failed to return the Tenant's security deposit and did not make an application for dispute resolution.

Analysis

The Tenant applies for return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she did not agree to the Landlord retaining any portion of her security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 9, 2019 (5 days after the package was mailed on July 4, 2019). I accept the Tenant's representative's testimony that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's written consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the

Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I Order, pursuant to sections 38, 67 and 72 of the *Act*, that the Landlord pay the Tenant the sum of **\$900.00**, comprised of double the security deposit (2 x \$400.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double their security deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$900.00**.

The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: October 29, 2019

Residential Tenancy Branch