



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 June 14, 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 deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on September 30, 2019 as a teleconference hearing. Only the Tenant appeared and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to the Landlord by registered mail. A copy of the Canada Post registered mail receipt was submitted confirming the mailing took place on June 21, 2019. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on June 26, 2019, the fifth day after the registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was 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 Tenant testified that the tenancy began on September 15, 2017 and ended on November 15, 2018. During the tenancy, rent was due in the amount of \$5,800.00 per month. The Tenant testified that she paid a security deposit in the amount of \$3,900.00 to the Landlord at the start of the tenancy. The Tenant submitted a copy of the tenancy agreement as well as a receipt confirming payment of the security deposit in support.

The Tenant stated that following the end of the tenancy on November 15, 2018, the Tenant requested the return of her security deposit from the Landlord. The Tenant stated that the Landlord indicated that there had been a stain on the carpet and that the parties agreed that the Landlord would be permitted to retain \$400.00 to replace a portion of the carpet in the rental unit. The Tenant stated that she expected the Landlord to return the remaining balance of her security deposit.

The Tenant stated that she provided the Landlord with her forwarding address in writing on April 18, 2019, which was sent to the Landlord via registered mail. The Tenant provided the Canada post tracking information in support. The Tenant stated that she has not received any amount from her security deposit. The Tenant stated that the parties did not complete a condition inspection report at the start, nor at the end of the tenancy.

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 November 15, 2018 and provided the Landlord with her forwarding address by registered mail on April 18, 2019. Based on the oral and written submissions of the Tenant, and in accordance with section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on April 23, 2019, the fifth day after the registered mailing.

I accept that the Tenant agreed to the Landlord retaining \$400.00 in relation to a stain found on the carpet of the rental unit. As there is no evidence before me that the Landlord was entitled to the remaining balance 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 May 8, 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 remaining amount of security deposit paid to the Landlord.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator double the remaining amount of security deposit after the agreed upon deduction ($\$3,900.00 - \$400.00 = \$3,500.00$; $\$3,500.00 \times 2 = \$7,000.00$) to determine the amount of the monetary order.

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 \$7,100.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$7,100.00. 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: October 1, 2019

Residential Tenancy Branch