



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a monetary order in the amount of \$2,500, representing twice the security deposit, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:44 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail on June 25, 2019. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord is deemed served with this package on June 30, 2019, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- 1) a monetary order for \$2,500; and

2) recover his security deposit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting November 29, 2019 and ending March 31, 2019. Monthly rent is \$2,500 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,250. The landlord still retains this deposit.

The tenant testified that the tenancy ended March 31, 2019. He testified that he provided the landlord his forwarding address in writing sent by both registered mail and email. The tenant provided the Canada Post tracking number for this mailing, which is reproduced on the cover of this decision.

The tenant submitted into evidence the email chain between him and the landlord wherein the tenant provides his forwarding address, and wherein the landlord suggests that the tenant damaged the rental unit floor during the tenancy.

The tenant testified that, to date, the landlord has not returned any portion of the security deposit to him.

Analysis

Section 38(1) of the Act states:

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.

Based on the testimony of the tenant, I find that the tenancy ended on March 31, 2019, and that the tenant provided his forwarding address in writing to the landlord on May 22, 2019.

I find that the landlord has not returned the security deposit to the tenant within 15 days of receiving the forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant.

It is not enough for the landlord to allege the tenant damaged the rental unit. He must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenant's forwarding address.

The landlord did not do this. Accordingly, I find that he has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that he pay the tenant double the amount of the security deposit (\$2,500).

As the tenant has been successful in their application, he is entitled to have his filing fee of \$100.00 repaid by the landlord.

Conclusion

Pursuant to section 67, I order that the landlord pay the tenant \$2,600, representing an amount double the security deposit plus the filing fee. This order may be filed and enforced in the Provincial Court of British Columbia.

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 03, 2019

Residential Tenancy Branch