



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 ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties. During the hearing the parties presented their evidence. A summary of their evidence is provided below and includes only that which is relevant to the hearing.

At the outset of the hearing, the landlord confirmed that they received the tenant's documentary evidence and that they had the opportunity to review the tenant's documentary evidence prior to the hearing. The landlord confirmed that they did not serve the tenant with their documentary evidence and as a result, the parties were advised that I would be excluding the landlord's documentary evidence in full as it was not served on the tenant as required by the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules").

Preliminary and Procedural Matters

At the outset of the hearing, the tenant's application was amended by consent of the parties to correct the rental unit address to Road instead of Avenue, and also to correct the spelling of the landlord's surname. These amendments were made pursuant to section 64(3)(c) of the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. Any applicable orders will be emailed to the appropriate party for service on the other party.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The tenant claims the tenancy began in 2004, while the landlord claims the tenancy started November 1, 2009. The tenant paid a security deposit of \$320.00 at the start of the tenancy, which the landlord continues to hold. The parties agreed that by the end of the tenancy, monthly rent was \$840.00 per month. The parties confirmed that the tenant vacated the rental unit on June 3, 2019.

The landlord testified that they received the tenant's written forwarding address in June 2019 and did not dispute that it could have been on June 3, 2019. The landlord confirmed they have not filed an application to claim against the tenant's security deposit. The landlord also confirmed that they have not have written permission from the tenant to retain any portion of the tenant's security deposit. To date, the landlord has not returned any portion of the tenant's security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, the burden of proof is on the tenant to provide sufficient evidence to support their claim. I find the tenant has failed to provide sufficient evidence to support the start date of the tenancy was in 2004, therefore, I will rely on the later date provided during the hearing as the start date of the tenancy, which I find to November 1, 2009. I have used this date as the tenant's testimony was vague when compared to the testimony of the landlord, which was specific and named November 1, 2009. As a result, I find there is no interest on the security deposit since November 1, 2009 under the *Act*. During the hearing, the parties were advised that I would be using the online Deposit Interest Calculator, which is located on the RTB website at: <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>

Tenant's claim for the return of double the security deposit – I accept that the tenancy ended when the tenant vacated the rental unit on June 3, 2019. Section 38 of the *Act* applies, which 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.

(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.

[Emphasis added]

In the matter before me, the parties agreed that the landlord did not apply to claim towards the tenant's security deposit and that the landlord continues to hold the tenant's \$320.00 security deposit. Furthermore, the landlord confirmed that they did not have written permission from the tenant to deduct any amount from the security deposit.

Given the above, and pursuant to section 38 of the *Act*, I find the landlord had to either return the tenant's full security deposit to the tenants or file an application to claim towards the security deposit within 15 days of the date the tenant vacated the rental unit, June 3, 2019, and having received the tenant's written forwarding address on the same date. Accordingly, the landlord had to return the tenant's security deposit which has accrued no interest, or file an application claiming towards the security deposit by June 18, 2019, which the landlord failed to do. In addition, the landlord did not have written authorization from the tenant to retain any portion of the security deposit.

Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of June 3, 2019, having not made a claim towards the security deposit. Therefore, I find the tenant is entitled to the return of double their original security deposit of \$320.00 in the amount of **\$640.00**.

As the tenant's application was successful, I grant the tenant the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$740.00**, comprised of \$640.00 for the doubled security deposit including \$0.00 in interest, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$740.00**.

I caution the landlord not to breach section 38 of the *Act* in the future.

Conclusion

The tenant's application is fully successful.

The tenant's security deposit doubles under section 38 of the *Act*.

The tenant is also granted the cost of the filing fee pursuant to section 72 of the *Act*.

The tenant has been granted a monetary order under section 67 in the amount of \$740.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties as indicated above.

The monetary order will be emailed to the tenant only for service on the landlord.

The landlord has been cautioned not to breach section 38 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 23, 2019

Residential Tenancy Branch