



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order for the return of her security deposit and a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The tenant attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that she served the landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail on July 4, 2019. The tenant provided the tracking number to confirm this mailing, which is reflected on the style of cause page of this Decision.

Based upon the submissions of the tenant, I accept the landlord was served notice of this hearing and the tenant's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The hearing process was explained to the tenant and she was given an opportunity to ask questions about the hearing process. Thereafter, the tenant was provided the opportunity to present her evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

I have refused the portion of the tenant's application seeking monetary compensation for \$9,000.00, pursuant to section 59(5)(c) of the Act. I determined her application seeking the amount did not provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the Act and Rule 2.5 of the Rules.

Specifically, the tenant failed to provide a breakdown for the \$9,000.00 amount claimed at the time the tenant applied or before the 14 day deadline under the Rules to submit evidence expired. I find that proceeding with the tenant's claim at this hearing would be prejudicial to the landlord, as the absence of particulars that set out how the tenant arrived at the amounts being claimed makes it difficult, if not impossible, for the landlord to adequately prepare a response to the tenant's claim. I note the tenant applied on July 4, 2019, which provided significant time for the tenant to comply with Rule 2.5, however, the tenant failed to do so.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against him at the time the applicant submits her application. Given the above, the tenant is granted liberty to reapply for the balance of her monetary claim but is reminded to provide full particulars of their monetary claim. The tenant may include any additional pages to set out the details of their dispute in their application, as required.

The hearing proceeded on the tenant's request for \$490.00 for the return of her security deposit.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit?

Background and Evidence

The tenant submitted that this tenancy began on January 1, 2019, and ended on February 28, 2019.

The tenant submitted that she paid the landlord a security deposit of \$490.00 and he has not returned it.

The tenant submitted a copy of a previous dispute resolution decision from the RTB. The arbitrator in the Decision of May 17, 2019, determined that the tenant had not provided her written forwarding address in advance of the hearing. The original arbitrator wrote that the landlord was put on notice through their Decision that he was required to deal with the tenant's security deposit as required under section 38 of the Act.

The original arbitrator wrote that the landlord was deemed to have received their Decision 5 days after the date it was written and would have 15 days from that date to deal with the tenant's security deposit. If the landlord did not deal with the security deposit as required by the Act within 15 days of the deemed received day, the tenant could apply for double her deposit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act. I do not find that the tenant has extinguished her rights to the return of her security deposit.

In this case, under the Decision of another arbitrator written on May 17, 2019, the landlord was deemed to have received the tenant's written forwarding address on May 22, 2019, and the landlord was required to deal with that deposit under section 38 of the Act. There is no evidence the landlord has applied for dispute resolution claiming against the security deposit, and the undisputed evidence is that he has not returned the tenant's security deposit.

I therefore grant the tenant's application for dispute resolution and order that the landlord pay the tenant double her security deposit of \$490.00.

The tenant is therefore granted a monetary order, pursuant to section 67 of the Act, for \$980.00, comprised of her security deposit of \$490.00, doubled.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for a return of her security deposit is granted.

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 7, 2019

Residential Tenancy Branch