



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 14, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order that the Landlords return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant stated that he served his Application and documentary evidence to the Landlord by registered mail. The Landlord confirmed receipt. No issues were raised regarding service; therefore, I find that Landlord was sufficiently served, pursuant to Section 71 of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant clarified that he was not seeking a monetary order relating to damage or compensation. The Tenant stated that he was only seeking the return of his security deposit and the filing fee paid to make the Application. As such, the Tenant's Application was amended accordingly.

The parties were 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.

Issues 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 parties testified and agreed that the Tenant entered into a tenancy agreement on June 10, 2019 for a tenancy that was meant to start on July 1, 2019. The parties stated that they had agreed to delay the start of the tenancy until August 1, 2019. The Tenant paid the Landlord a security deposit in the amount of \$1,200.00 on June 10, 2019.

The Tenant stated that on July 25, 2019 he drove past the rental unit and decided he no longer wished to move into the rental unit. The Tenant stated that he notified the Landlord and provided his forwarding address to the Landlord in writing on July 25, 2019, requesting the return of his security deposit. The Tenant stated that he has not yet received any amount from the Landlords. The Tenant provided a copy of the tenancy agreement and a copy of his request for the security deposit containing forwarding address in support.

The Landlord stated that he was unsure if he received the Tenant's forwarding address as he had an agent acting on his behalf. The Landlord stated that he lost three months' worth of rent as a result of the Tenant deciding to not move into the rental unit. The Landlord stated that his agent notified him that the Tenant forfeited his security deposit as a result of him not ever taking possession of the rental unit. As such, the Landlord has not yet returned the Tenant's deposit.

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.

In this case, the parties agreed that the tenancy was meant to start on August 1, 2019, however, the Tenant decided against moving into the rental unit and advised the Landlord as such on July 25, 2019. The Tenant provided sufficient evidence that he provided the Landlord with his forwarding address in writing on July 25, 2019.

I accept the Landlord's testimony that he suffered a financial loss as a result of the Tenant deciding against moving into the rental unit. I find that that if the Landlord felt entitled to retain the Tenant's security deposit, he would have had to submit an application for dispute resolution within 15 days after receiving the Tenant's forwarding address in writing. As there is no evidence before me that that the Landlords were entitled to retain all or a portion 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 Landlords had until August 9, 2019, to repay the deposit or make an application for dispute resolution. The Landlords 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 security deposit paid to the Landlords (\$1,200.00 x 2 = \$2,400.00).

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 \$2,500.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$2,500.00. 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: December 05, 2019

Residential Tenancy Branch