



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 15, 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; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on January 17, 2020 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 in person on September 20, 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 September 20, 2019. The Landlord did not submit any 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.

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 Tenant provided a copy of the tenancy agreement between the parties which confirmed that the tenancy began on December 1, 2016 and ended on August 10, 2019. During the tenancy, rent in the amount of \$740.00 was due to the Landlord each month. The Tenant paid a security deposit in the amount of \$370.00, which the Landlord continues to hold.

The Tenant stated that the tenancy ended on August 10, 2019. The Tenant stated that the parties came together on August 10, 2019 to conduct a move out condition inspection of the rental unit. The Tenant stated that he provided the Landlord with his forwarding address in writing during the inspection which he included on the condition inspection report. The Tenant provided a copy of the condition inspection report which is signed by the parties, dated August 10, 2019, and contains the Tenant's forwarding address.

The Tenant stated that he made several attempts at contacting the Landlord, requesting the return of the security deposit prior to making his Application. The Tenant stated that on September 25, 2019 he received a cheque from the Landlord via Purolator in the amount of \$370.00.

The Tenant is seeking double the security deposit, less the \$370.00 already received. No one on behalf of the Landlord attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested 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 August 10, 2019 and provided the Landlord with his forwarding address in writing during the move out condition inspection on August 10, 2019 which is confirmed in the condition inspection report provided by the Tenant.

As there is no evidence before me that that the Landlord was 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 Landlord had until August 25, 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 security deposit paid to the Landlord, less any amounts already received.

The Tenant testified that the Landlord returned \$370.00 to the Tenant on September 25, 2019. In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ($\$370.00 \times 2 = \740.00), then deduct the amount already returned to the Tenant ($\$740.00 - \$370.00 = \$370.00$), 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 \$470.00 ($\$370.00 + \$100.00 = \470.00).

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$470.00. 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: January 17, 2020

Residential Tenancy Branch