



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on September 19, 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/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by M.C., an agent. Both the Tenant and M.C. provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail. On behalf of the Landlord, M.C. acknowledged receipt. No issues were raised with respect to service of these documents during the hearing. Therefore, pursuant to section 71 of the *Act*, I find the Notice of Dispute Resolution Hearing package was sufficiently served for the purposes of the *Act*.

On behalf of the Landlord, M.C. testified the Landlord's documentary evidence package was served on the Tenant by registered mail on January 15, 2020. The Tenant testified she did not receive it. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five (5) days later. Further, Rule of Procedure 3.15 confirms the Landlord's evidence must be received by the Tenant not less than seven (7) days before the hearing. Even if I find the Landlord's documentary evidence is deemed to have been received by the Tenant on January 20, 2020, they were served on the Tenant late, contrary to Rule of Procedure 3.15. As a result, I find the Landlord's evidence was not served in accordance with Rule of Procedure 3.15 and

has been excluded from consideration. However, I note the matter is capable of being resolved based only on the oral testimony of the parties.

The parties were given a full 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 and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the fixed-term tenancy began on April 1, 2019 and ended on August 31, 2019. During the tenancy, rent in the amount of \$1,850.00 per month was due on or before the first day of each month. The Tenant paid a security deposit in the amount of \$925.00, which the Landlord holds.

The Tenant testified that a forwarding address was provided to the Landlord in writing during a move-out condition inspection that took place on August 30, 2019. A copy of the condition inspection report, signed by the parties, was submitted into evidence.

In reply, M.C. acknowledged that the Tenant's forwarding address was received on August 30, 2019. However, he testified the security deposit was retained because the Tenant violated the strata rules and bylaws during the tenancy by renting the unit on Airbnb. A fine was issued by the head strata manager but the fine was subsequently withdrawn. When the fine was withdrawn, the security deposit was sent to the Tenant's forwarding address by registered mail on November 12, 2019. The Tenant confirmed she did not receive it because she was out of the country. M.C. testified the Landlord has remained willing to return the security deposit to the Tenant.

Analysis

Based on the documentary evidence 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 an application to keep 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 do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the tenancy ended on August 31, 2019. Further, I find the Tenant's forwarding address in writing was provided to and received by the Landlord during the move-out condition inspection on August 30, 2019. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until September 15, 2019, to repay the deposit to the Tenant or make a claim against it by filing an application for dispute resolution. On behalf of the Landlord, M.C. confirmed the Landlord did not return the security deposit to the Tenant until November 12, 2019 by registered mail.

The Landlord continues to hold the security deposit, and there is no evidence before me to indicate the Landlord made an application for dispute resolution. Further, the claim that the Tenant violated strata rules and bylaws that resulted in a fine is not an excuse for the arbitrary retention of a security deposit. If the Landlord had a claim against the deposit, it was obligated to make an application for dispute resolution within the timeframe set out in section 38(1) of the *Act*. The Landlord did not. As a result, pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord, or \$1,850.00. Having been successful, I also grant the Tenant \$100.00 in recovery of the filing fee paid to make the Application.

Pursuant to sections 38 and 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,950.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,950.00. 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 23, 2020

Residential Tenancy Branch