



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Van Center Management Inc.
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 October 10, 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 February 24, 2020 as a teleconference hearing. 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 on the Landlord by registered mail on October 18 and 24, 2019. The Tenant provided a copy of the registered mail receipts confirming service. 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 October 23 and 29, 2019, the fifth day after the registered mailings. The Landlord did not submit 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 testified that the tenancy began on August 1, 2015 and ended on February 28, 2019. Near the end of the tenancy, rent was due in the amount of \$981.00 per month. The Tenant testified that she paid a security deposit in the amount of \$455.00 which the Landlord continues to hold.

The Tenant stated that on February 28, 2019 she put the keys to the rental unit along with her forwarding address in writing in an envelope and place it in the Landlord's mailbox. The Tenant stated that the mail box used was the same mailbox that she placed her rent payments in each month throughout her tenancy. The Tenant provided photographic evidence of her forwarding address being placed in the Landlord's mailbox in support.

The Tenant stated that the Landlord has not yet returned her security deposit and that she has not consented to the Landlord retaining any amount of the security deposit. The Tenant stated that she is seeking the return of double the amount of her security deposit in the amount of \$910.00. If successful, the Tenant is also seeking the return of the filing fee paid to make the Application.

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. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant vacated the rental unit on February 28, 2019 and provided the Landlord with her forwarding address by placing it in the Landlord's mailbox on February 28, 2019. Pursuant to sections 89 and 90 of the *Act*, I find that the Landlord is

deemed to have been served with the Tenant's forwarding address on March 3, 2019, the third day after delivery.

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 March 18, 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 (\$455.00 x 2 = \$910.00). 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 \$1,010.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,010.00. 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: February 25, 2020

Residential Tenancy Branch