



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 17, 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
- a monetary order for damage or compensation.

The hearing was scheduled for 1:30pm on February 18, 2020 as a teleconference hearing. The Tenant and the Tenant's interpreter E.C. attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 17 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, E.C., 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 on October 19, 2019. A copy of the registered mail receipt was provided in support. 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 24, 2019, the fifth day after their registered mailing. 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 a monetary order for damage or compensation, pursuant to section 67 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on August 26, 2018. During the tenancy, the Tenant paid rent in the amount of \$1,780.00 to the Landlord each month. The Tenant stated that she paid a security deposit in the amount of \$900.00 which the Landlord continues to hold. The Tenant stated that the tenancy ended on November 30, 2018. The Tenant provided a copy of the tenancy agreement in support.

The Tenant stated that she provided the Landlord with her forwarding address by registered mail on March 2, 2019. The Tenant stated that the Landlord did not include their address for service on the tenancy agreement, therefore, the Tenant sent their forwarding address to the rental unit which is owed by the Landlord. The Tenant provided a copy of the title search confirming that the Landlord's name listed on the tenancy agreement is the same name as the owner listed on the title search. The Tenant stated that the Landlord has not yet returned her security deposit.

The Tenant is also seeking monetary compensation relating to the costs of postage fees in the amount of \$38.37 which was incurred in preparation for the hearing.

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 Tenant vacated the rental unit on November 30, 2018 and provided the Landlord with her forwarding address by registered mail on March 2, 2019 to the dispute address. In this case, I find that the Landlord did not provide their address for service on the tenancy agreement. I find that the Tenant has provided sufficient evidence to demonstrate that the Landlord listed on the tenancy agreement is the owner of the rental unit. 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 Tenant's forwarding address on March 7, 2019, the fifth day after the registered mailing.

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 22, 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 (\$900.00 x 2 = \$1,800.00).

In relation to the Tenant's claim for monetary compensation in the amount of \$38.37 for postage fees, I find that the cost for postage is not recoverable under the *Act*. As such, I dismiss this portion of the Tenant's claim without leave to reapply.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,800.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,800.00. 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 18, 2020

Residential Tenancy Branch