



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689352 B.C. LTD 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 December 20, 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 March 31, 2020 as a teleconference hearing. Only the Tenant appeared at the appointed date and time of the hearing. No one appeared for the Landlord. The conference call line remained open and was monitored for 20 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. The Tenant stated that the Landlord never provided their address for service to the Tenant, therefore, the Tenant conducted a Land Title search which provided the Tenant with the address for the registered owner of the rental property. The Tenant provided a copy of the Land Title search, a copy of the registered mail receipt, as well as photographic evidence of the package being mailed on December 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 December 25, 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 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 October 13, 2018 and ended on October 15, 2019. During the tenancy, rent was due in the amount of \$1,650.00 per month. The Tenant testified that he paid a security deposit of \$900.00 to the Landlord. The Tenant submitted a copy of the tenancy agreement in support of this testimony.

The Tenant stated that he provided the Landlord with his forwarding address in writing on October 15, 2019. The Tenant stated that he had the Landlord sign the letter, acknowledging receipt. The Tenant provided a copy of the signed letter containing the Landlord's signature in support.

The Tenant stated that he requested the return of his security deposit, however, the Landlord has not yet returned any amount to the Tenant. The Tenant stated that he did not consent to the Landlord retaining any amount of his security deposit. As such, the Tenant is seeking the return of double his deposit in the amount of \$1,800.00. The Tenant stated that the Landlord had overpaid the Tenant in the amount of \$25.00 relating to a rent credit. The Tenant stated that he would like this amount deducted from his claim if successful. The Tenant is also seeking the return of the filing fee.

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 October 15, 2019 and provided the Landlord with their forwarding address in writing on October 15, 2019. The Tenant provided a copy of the letter which was signed by the Landlord confirming her receipt.

I find that the Landlord confirmed receipt of the Tenant's forwarding address on October 15, 2019. As there is no evidence before me 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 October 30, 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, \$1,800.00. During the hearing the Tenant stated that he would like \$25.00 deducted from his monetary award as he felt the Landlord overpaid him by \$25.00 relating to a rent credit.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ($\$900.00 \times 2 = \$1,800.00$), then deduct the amount already returned to the Tenant ($\$1,800.00 - \$25.00 = \$1,775.00$), 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 \$1,875.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,875.00. 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: March 31, 2020

Residential Tenancy Branch