



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 6, 2019, wherein the Tenant sought monetary compensation in the amount of \$3,100.00 from the Landlord including return of double the security and pet damage deposit paid, compensation pursuant to section 51(2) of the *Act* and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on March 24, 2020. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:48 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and her Application on November 12, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of November 17, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed her email addresses during the hearing as well as her understanding that this Decision would be emailed to her.

Issue to be Decided

1. Is the Tenant entitled to return of double her security and pet damage deposit?
2. Is the Tenant entitled to monetary compensation pursuant to section 51(2) of the *Act*?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant provided a copy of the residential tenancy agreement in evidence. This document confirmed that the tenancy began December 1, 2011. Monthly rent was payable in the amount of \$1,200.00. The Tenant also paid a security deposit of \$600.00 and a pet damage deposit of \$300.00.

The Tenant testified that the Landlord failed to do a move in condition inspection.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on June 30, 2019. The Tenant stated that she moved out on July 31, 2019. The Tenant testified that the Landlord failed to provide the Tenant with a free month's rent as required by the 2 Month Notice.

The Tenant further testified that on the date she moved from the rental unit, she gave the landlord her forwarding address in writing. She stated that she drafted a formal letter, asked him to sign it and in response he scribbled on it and then refused to sign it.

The Tenant then wrote her forwarding address on another piece of paper, left this note and her keys for the Landlord and took a photo of this letter. A copy of this photo was provided in evidence before me.

The Tenant confirmed that the Landlord did not return her deposit and to her knowledge the Landlord also did not make an application for dispute resolution.

The Tenant stated that the Landlord also refused to do a move out condition inspection.

Analysis

The Tenant applies for return of double her security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she did not agree to the Landlord retaining any portion of her deposits.

I find that the Landlord received the Tenant's forwarding address in writing on July 31, 2019.

I further find that the Landlord failed to return the Tenant's deposits or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security and pet damage deposit are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the Tenant's deposits through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's deposits. Here the Landlord did not have any such authority under the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$1,800.00**, comprised of double the security and pet damage deposit.

The evidence confirms the tenancy ended pursuant to a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. A Tenant who receives such a Notice is entitled to a free month's rent pursuant to section 51(2). I accept the Tenant's evidence that the Landlord failed to provide her with her free month's rent as required by section 51(1) of the *Act*. I therefore find she is entitled to the further sum of **\$1,200.00**.

As the Tenant has been substantially successful in her Application I also award her recovery of the **\$100.00** filing fee for a total award of **\$3,100.00**.

Conclusion

The Tenant's application for return of double her security and pet damage deposit, compensation pursuant to section 51(2) and recovery of the filing fee is granted.

In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$3,100.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

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 24, 2020

Residential Tenancy Branch