



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the Act) for return of security deposit pursuant to section 38 of the Act and authorization to recover the cost of filing the dispute application pursuant to section 72 of the Act.

The landlord and one tenant attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, ask questions, and make submissions. Neither party identified any problem with notification about the particulars of this dispute or the exchange of information about this dispute and were prepared to resolve this dispute today.

Issue to be Decided

Is the tenant entitled to return of a \$1,550.00 security deposit?

Background and Evidence

The parties agreed the tenancy commenced September 1, 2018 and ended on June 30, 2019. Monthly rent was \$3,100.00 due on the first of the month. The landlord confirmed he continues to hold in trust the tenant's security deposit of \$1,550.00. The parties agreed that together they completed move-in and move-out condition inspections of the rental unit. The records of the inspections are verbal, no written reports were completed.

The documentary evidence submitted by both parties shows the landlord and tenant argued about who was responsible for minor damage to the rental unit, with the tenant agreeing to fix a hole in the door and the landlord wanting compensation for more

damage, e.g., for repair of the ceiling in the bathroom; the quotations for repairs that were exchanged between the parties were submitted as evidence by both parties. An email exchange in evidence from both parties shows that when the parties could not reach agreement on how much the landlord could retain from the tenant's security deposit, the tenant provided her forwarding address to the landlord on July 11, 2019 and advised the landlord she would file for dispute resolution.

The landlord testified he did receive the tenant's forwarding address on July 11, 2019 and he did not agree with her position that she was only responsible for the repair to the door. The tenant sublet the rental unit and was not aware of the extent of the damage caused by subtenants; she is required to pay for more repairs than just the door. The landlord asserted he had initially tried to return \$700.00 of the tenant's security deposit by electronic transfer but it was not accepted (this is documented in evidence).

The landlord testified he was willing to return \$480.00 of the tenant's security deposit as he spent approximately \$1000.00 on repairs. The landlord testified he has not filed an application for dispute resolution to retain any portion of the tenant's security deposit, stating he was awaiting the outcome of the tenant's application.

The tenant confirmed, as stated in her application, she is seeking return of her entire security deposit of \$1,550.00.

Analysis

Section 36 of the Act requires the landlord to complete a move-out condition inspection report at the end of the tenancy and provide a copy of the inspection report to the tenant. The parties agreed there are no inspection reports. A verbal agreement about the outcome of an inspection of the condition of the rental unit is not permitted under the Act.

As the landlord failed to comply with the Act's requirement to complete an inspection report and give a copy to the tenant, he has extinguished his right to claim against the security deposit or obtain the tenant's consent to retain the security deposit (reference: Section 36(2) and Policy Guideline 17, Part B, section 7).

Section 38 of the Act regulates the return of the tenant's security deposit. The landlord received the tenant's forwarding address on July 11, 2019. To date the landlord has not returned the tenant's security deposit or filed an application to retain any portion of it. The Act allows the landlord 15 days after receiving the forwarding address to return the

tenant's security deposit or file an application to retain it (reference: Section 38(1)(a) – (d)).

If the landlord fails to return the security deposit or file an application in time, section 38(6) provides the consequence: the landlord must pay the tenant double the value of the security deposit. Section 3 under part C of Policy Guideline 17 notes the arbitrator will order return of double the value of the security deposit unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing. The tenant did not waive the doubling of her deposit in her application or during the hearing.

Conclusion

The tenant's application is successful. Pursuant to section 38(6), I order the return of double the tenant's \$1,550.00 security deposit (no interest is payable), and the \$100.00 application filing fee for a total award of \$3,200.00 for the tenant.

I issue a monetary order to the tenant. This order must be served to the landlord; should the landlord fail to pay the tenant, the tenant may file the order for enforcement in the small claims division of BC provincial 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 31, 2020

Residential Tenancy Branch