



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution by Direct Request, made on February 25, 2020 (the "Application") and adjourned to a participatory hearing. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*

The parties were 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 Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 and 67 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 parties testified and agreed that they came together on November 3, 2019 and entered into a six-month fixed term agreement which was meant to start on November 10, 2019 and end on May 10, 2020, at which point the tenancy would convert to a month to month periodic tenancy. The Tenant would have been required to pay rent in the amount of \$1,350.00 which was due on the 10th day of each month to the Landlords. The Tenant paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$500.00, for a total of \$1,175.00 paid to the Landlord which they continue to hold.

The parties testified and agreed that the rental unit flooded on November 6, 2019, prior to the Tenant taking possession of the rental unit. The parties agreed that the Landlord would complete remediation work to the rental unit and that the Tenant was still interested in moving into the rental unit once the work was complete, however, neither party was certain as to when the rental unit would be suitable for occupation.

The Tenant stated that he was able to be flexible with his move in date to a certain extent, however, on January 1, 2020 he was required to make a decision to move out of his living situation at that time, committing to a move out date of January 31, 2020. The Tenant stated that he communicated this to the Landlords, who assured him that the rental unit would be ready for the Tenant to move into on January 31, 2020. The Tenant stated that he attended the rental unit on January 21, 2020 to see what progress had been made in remediating the rental unit. The Tenant stated that he felt as though the rental unit would not be ready for him to move into on January 31, 2020 as intended.

The Tenant stated that he became worried that the rental unit would not be ready in time, therefore, he began seeking other accommodations to ensure that he would not be stranded at the end of January 2020. The Tenant stated that he found a new living situation and notified the Landlords on January 24, 2020 that he would not be moving into the rental unit on January 31, 2020 as intended.

The Tenant stated that he sent the Landlords his forwarding address and request for his deposits to be returned to him by registered mail on January 27, 2020. The Tenant

stated that he did not consent to the Landlords retaining his deposits and to date, has not received his deposits from the Landlords.

In response, the Landlords stated that they were very accommodating to the Tenant during the time that the remediation of the rental unit was taking place. The Landlords stated that they had every indication from the Tenant that he intended to occupy the rental unit on January 31, 2020 and they felt as though the rental unit would have been ready on time. The Landlords confirmed that they received the Tenants notice to end tenancy on January 24, 2020 as well as the Tenant's forwarding address on January 27, 2020. The Landlords stated that they felt entitled to retaining the Tenant's deposits as he did not provide them with sufficient notice to end the tenancy. The Landlords stated that they were unable to re-rent the rental unit for the month of February 2020 and have suffered a financial loss as a result.

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 never occupied the rental unit as it sustained a flood, delaying the move in date of the tenancy. The Tenant provided the Landlords with his notice that he would not be moving into the rental unit on January 24, 2020 and provided the Landlords with his forwarding address by registered mail on January 27, 2020. The Landlords confirmed receipt of both the notice to end tenancy as well as the Tenant's forwarding address on the above-mentioned dates.

While the Landlords felt entitled to retaining the Tenant's security and pet damage deposit as the Tenant did not provide sufficient notice to end tenancy, I find that there is no evidence before me that the Landlords submitted an application to retain the Tenant's deposits. I find that the Landlords were 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 Landlords had until February 11, 2020, to repay the deposit or make an application for dispute resolution. The Landlords 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 and pet damage deposits paid to the Landlords (\$1,175.00 x 2 = \$2,350.00).

The Landlords remain at liberty to apply for monetary compensation for loss, should they feel entitled to it.

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 38, 67, and 72 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$2,450.00.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$2,450.00. 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: April 21, 2020

Residential Tenancy Branch