



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 3, 2020 (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 Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the Tenant's 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 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 parties testified and agreed that the tenancy began on May 17, 2019 and ended on December 6, 2019. During the tenancy, rent in the amount of \$9,800.00 was due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit

in the amount of \$4,900.00 to the Landlord. The Tenant submitted a copy of the tenancy agreement in support.

The Tenant stated that after moving out of the rental unit in December 6, 2019 she provided the Landlord with her forwarding address on December 8, 2019. The Tenant stated that she requested the full amount of her deposit to be returned to her and did not consent to the Landlord retaining any amount. The Tenant stated that she received \$3,003.23 from the Landlord on January 4, 2020, but that the Landlord has retained the remaining portion of the Tenant's security deposit.

The Landlord confirmed that she received the Tenant's forwarding address on December 8, 2019. The Landlord confirmed that she returned \$3,003.23 of the Tenant's \$4,900.00 security deposit to the Tenant on January 4, 2020. The Landlord stated that she felt entitled to retaining the remaining portion of the Tenant's security deposit towards unpaid rent from December 1 to 6, 2019.

The Tenant is seeking the return of double her security deposit as well as the filing fee paid to make the Application.

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 December 6, 2019 and provided the Landlord with her forwarding address on December 8, 2019. I accept that the Landlord confirmed receipt of the Tenant's forwarding address on December 8, 2019 and returned \$3,003.23 of the Tenant's \$4,900.00 security deposit on January 4, 2020.

As there is no evidence before me that the Landlord was entitled to retain the remaining 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 December 23, 2019 to repay the deposit in full or make an application for dispute resolution if the Landlord felt entitled to retaining the portion of the Tenant's deposit. 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, less any amounts already received. During the hearing, the parties agreed that the

Landlord returned \$3,003.23 of the Tenant's security deposit which was received January 4, 2020.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ($\$4,900.00 \times 2 = \$9,800.00$), then deduct the amount already returned to the Tenant ($\$9,800.00 - \$3,003.23 = \$6,796.77$), 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 \$6,896.77.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$6,896.77. 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: May 26, 2020

Residential Tenancy Branch