



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenant seeks compensation (for the return of their security deposit) pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee pursuant to section 72 of the Act.

An application for dispute resolution was made on January 17, 2020 and a dispute resolution hearing was convened, by way of teleconference, on June 11, 2020. The tenant attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The landlord failed to attend.

The tenant testified and confirmed that she served the landlord with the Notice of Dispute Resolution Proceeding package by way of Canada Post Registered Mail on January 22, 2020. A copy of the tracking number and the receipt were submitted into evidence, and Canada Post’s online tracking database indicated that the landlord had signed for, and thus received, the package on January 25, 2020. Based on the undisputed testimony of the tenant, along with her supporting documentary evidence, I find that the tenant served the landlord in compliance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the tenant entitled to the return of their security deposit?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy started February 1, 2018 and ended on December 14, 2019. Monthly rent was \$1,050.00 and the tenant paid a security deposit of \$525.00. A copy of the Residential Tenancy Agreement was submitted into evidence.

On December 14, 2019, the tenant sent a text to the landlord in which the tenant's forwarding address was included: "Btw this is my new address [tenant's address]," to which the landlord responded and confirmed receipt with a text message containing two thumbs up and thank you hand emojis.

Also submitted into evidence was some written correspondence between the parties in which the landlord indicated that they would only be returning \$405.00 of the security deposit. They stated that they would be keeping the remaining \$120.00 in order to cover cleaning costs allegedly expended by them.

The tenant testified that the landlord has yet to return the balance, and that at no time did she provide written authorization for the landlord to keep the balance. She claims \$120.00 in compensation for the return of the balance of her security deposit, and seeks the amount doubled as permitted under the Act.

In addition, she seeks compensation in the amount of \$100.00 for the cost of the application filing fee.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, the tenancy ended on December 14, 2019 and the landlord did not return the entire balance of \$120.00 of the security deposit to the tenant within 15 days. Nor did the landlord make an application for dispute resolution claiming against the security deposit within 15 days. Quite simply, the landlord kept the money without legal authority under the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for \$120.00.

Section 38(6) of the Act states that

- (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.

Here, as the landlord did not comply with subsection 38(1) of the Act, I thus double the amount of the \$120.00 and award the tenant \$240.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful, I grant her claim for reimbursement of the filing fee in the amount of \$100.00, for a total monetary award of \$340.00.

Conclusion

The tenant's application is granted.

I grant the tenant a monetary order in the amount of \$340.00, which may be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant must serve a copy of the order on the landlord and then file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court). The landlord will be liable for all additional costs associated with enforcement and collection.

This decision, which is final and binding, is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 11, 2020

Residential Tenancy Branch