



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 082495 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On April 8, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 8, 2020, this Application was set down for a hearing on August 13, 2020 at 1:30 PM.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 36-minute teleconference call. The Tenant provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that she provided her forwarding address to the Landlord by registered mail on March 17, 2020 (the registered mail tracking number is on the first page of this Decision). The tracking history indicated that this package was delivered on March 23, 2020. The forwarding address that the Tenant used in this package was the dispute address because she had not established a new address and had her mail automatically forwarded by Canada Post.

She stated that she did not receive the Landlord's Notice of Hearing package and only found out about the dispute when she contacted the Residential Tenancy Branch about getting her deposit back. When she contacted Canada Post to find out why she did not receive the Landlord's Notice of Hearing package, she was advised that someone at the dispute address had signed for that package.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 2:06 PM. The Applicant did not dial into the teleconference during this time. 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 was the only person who had called into this teleconference.

As the Landlord did not attend the hearing by 2:06 PM, I find that the Application for Dispute Resolution has been abandoned. As such, the Landlord's Application for claims for damages is dismissed without leave to reapply. Furthermore, as the Landlord has applied to retain the deposit, this matter must be addressed.

With respect to the Landlord's claims against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address on March 23, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on April 8, 2020. As the Landlord did not return the deposit in full within 15 days of receiving the Tenant's forwarding address and as the Landlord's Application was outside the timeframe to claim against the deposit, I am satisfied that the Landlord breached the requirements of Section 38 and illegally withheld the deposit. Moreover, as the Landlord did not attend the hearing, this Application is dismissed without leave to reapply. As such, I find that the doubling provisions of the *Act* do apply in this instance and I award the Tenant a monetary award in the amount of **\$2,350.00**, which represents double the security deposit.

As the Landlord was not successful in this Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,350.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: August 13, 2020

Residential Tenancy Branch