



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed June 26, 2020, wherein the Tenant sought return of his \$800.00 security deposit, \$800.00 pet damage deposit paid and recovery of the \$100.00 filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on October 19, 2020. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:57 p.m. Additionally, 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 and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on July 2, 2020 by registered mail to the rental unit address. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Tenant further testified that the Landlord refused to give the Tenant her residential address and instead insisted that all correspondence relating to the tenancy be sent to the rental unit address. The Tenant also stated that when he first arrived at the rental property at the start of the tenancy, the Landlord asked him to sign a document indicating that she resided at the rental unit, which she stated had something to do with

her disability benefit entitlement. The Tenant confirmed that he signed this document, but that at no time did the Landlord live with him and his family.

I find the rental unit to be the address at which the Landlord carries on business as a landlord pursuant to section 89(1)(c) and I find that service on the Landlord at the rental unit is sufficient pursuant to section 71(2)(b) of the *Residential Tenancy Act* (the “*Act*”).

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 7, 2020 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant’s submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of the security and pet damage deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began July 1, 2019. The Tenant paid monthly rent of \$1,600.00 per month. He further testified that he paid a \$800.00 security deposit and a \$800.00 pet damage deposit. A receipt was provided in evidence which indicated the Tenant paid the first month’s rent and a security deposit; while there is no mention of the pet damage deposit the Tenant gave sworn testimony that he paid this sum.

The tenancy ended on May 31, 2020.

The Tenant stated that he provided the Landlord with his forwarding address on the telephone and she responded that she would not be returning his security or pet damage deposit.

The Tenant further testified that the Landlord did not provided him with an opportunity to do a move out condition inspection and refused his requests to do so.

The Tenant stated that when the Landlord told him he would not receive his deposits back, he completed a Residential Tenancy Branch Form providing the Landlord with his forwarding address and on May 31, 2020, when his father returned the keys to the rental unit to the Landlord's representative, his father provided a copy of this form to the Landlord.

The Tenant confirmed that to date the Landlord has not returned his security deposit, nor has she returned his pet damage deposit. He further confirmed that the Landlord has not made an application for Dispute Resolution.

Analysis

The Tenant applies for return of his security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that he did not agree to the Landlord retaining any portion of his deposits.

I find that the Landlord received the Tenant's forwarding address in writing on May 31, 2020. I further find that the Landlord failed to return the Tenant's deposits or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

By failing to perform an outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished her right to claim against the deposits for damages, pursuant to section 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$3,300.00**, comprised of double the deposits (\$800.00 (security deposit) + \$800.00 (pet damage deposit) = \$1,600.00 (total deposits) x 2 = \$3,200.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double their security and pet damage deposit and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$3,300.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: October 20, 2020

Residential Tenancy Branch