



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDB-DR, FFT

Introduction

The tenant seeks the return and doubling of her security and pet damage deposits pursuant to section 38 of the *Residential Tenancy Act* ("Act"). She also seeks recovery of the application filing fee under section 72 of the Act.

The tenant filed a direct request application on June 10, 2020 the matter was heard before me on October 26, 2020. The tenant, her interpreter, and the landlord's representative attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

The tenant's interpreter acknowledged that there are only two parties in the tenancy agreement, the tenant and the landlord. As such, I have amended the application to only include her name and have corrected the spelling of both parties' names.

Issue

1. Is the tenant entitled to the return and doubling of her security and pet damage deposits?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is referred to in this decision.

The tenancy began on May 25, 2019 and ended on May 24, 2020. Monthly rent was \$2,450 and the tenant paid a \$1,225 security deposit and a \$1,225 pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The tenant testified, through her interpreter, that she provided the landlord her forwarding address in the Condition Inspection Report at the end of the tenancy, on May 24, 2020. A copy of this report was in evidence and which showed the tenant's address. The tenant further testified that she did not provide written consent to the landlord to keep any or all of the deposits. To date she has not received the deposits.

The landlord's agent testified that the tenants caused damages to the rental unit, along with other strata charges, and that the landlord believes he reserves the right to retain the security and pet damage deposits as compensation for such damages and costs. No documentary evidence was submitted by the landlord.

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.

Claim for Return and Doubling of Security and Pet Damage Deposits

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 landlord received the tenant's forwarding address in writing on May 24, 2020. Therefore, the landlord had 15 days from May 24 to either repay the deposits or make an application for dispute resolution claiming against the deposits. I find that the landlord did neither, and has thus not complied with section 38(1) of the Act. If the tenant was liable for the alleged damages or costs, the landlord does not reserve the right to unilaterally retain the security and pet damage deposits without filing an application for dispute resolution claiming against the deposits.

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, having found that the landlord did not comply with section 38(1) of the Act, the landlord is not entitled to make a claim against the deposits and he must, pursuant to section 38(6)(b) of the Act, pay the tenant double the amount of the security and pet damage deposits. I thus award the tenant compensation in the amount of \$2,450.00.

Claim for Application Filing Fee Cost

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 applicant was successful, I grant her claim for reimbursement of the \$100 filing fee.

Summary of Award and Order

Issued in conjunction with this Decision, to the tenant, is a monetary order in the amount of \$2,550.00, which comprises the \$2,450 award for the security and pet damage deposits and the \$100 application filing fee.

Conclusion

I grant the tenant's application.

I hereby grant the tenant a monetary order in the amount of \$2,550.00, which must be served on the landlord. The landlord must pay the tenant within 15 days of receiving this Decision. Should the landlord fail to pay the tenant, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 26, 2020

Residential Tenancy Branch