



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing with the agent GST (“the tenant”) and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fourteen minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 22, 2020 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on July 27, 2020. The tenant submitted a copy of the tenancy agreement which included the address for service of the landlord. The tenant testified the documents were sent to that address; the tenant provided a copy of the receipt from Canada Post and the tracking number in confirmation of service. The tenant submitted a completed Proof of Service document in the RTB form.

Pursuant to sections 89 and 90 as well as the testimony and documentary evidence of the tenant, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on July 27, 2020, 2020.

Issues

Is the tenant entitled to the relief sought?

Background

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a fixed term tenancy agreement on June 1, 2019 which became a monthly tenancy at the end of the term on August 31, 2019. Rent was \$1,600.00 monthly payable on the first of the month. The tenant submitted a copy of the agreement.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$800.00. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified he provided written notice to the landlord on February 28, 2029 that he intended to vacate the unit on March 31, 2020. The letter included a forwarding address for the tenant. The tenant submitted a copy of the letter as evidence.

The tenant testified that the parties did not carry out a condition inspection on moving in or moving out.

The tenant testified that after he vacated, the landlord claimed in a letter dated May 27, 2020 that the tenant left damages to the unit which needed minor repairs of a value of \$490.00. Without the tenant's consent, the landlord retained the sum of \$490.00 and returned the balance of the security deposit of \$310.00 to the tenant.

The tenant stated that the landlord has not brought an application to keep any of the deposit.

The tenant requested a monetary award of double the deposit for the landlord's failure to return the deposit within 15 days of the provision of the forwarding address less the returned portion of \$310.00. The tenant requested reimbursement of the filing fee.

The tenant's claim is summarized as follows:

ITEM	AMOUNT
Deposit	\$800.00
Doubling of security deposit - section 38(6)	\$800.00
Reimbursement of filing fee – section 72	\$100.00
(Less partial refund)	(\$310.00)
Monetary Award Requested	\$1,390.00

Analysis

I accept the tenant's well-organized, complete and credible evidence. I find the tenant provided a deposit of \$800.00.

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's credible testimony

supported by documentary evidence and find the tenant served the landlord with the forwarding address on February 28, 2020.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, I find that the tenant is entitled to a monetary award of double the security deposit as well as reimbursement of the filing fee, less the partial return, for a total monetary order of **\$4,100.00**.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Deposit	\$800.00
Doubling of security deposit - section 38(6)	\$800.00
Reimbursement of filing fee – section 72	\$100.00
(Less partial refund)	(\$310.00)
Monetary Order	\$1,390.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,390.00**

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Courts of the Province of British Columbia to be 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: November 09, 2020

Residential Tenancy Branch