



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution by direct request, made on July 30, 2020 (the "Application") and adjourned to a participatory hearing. The Tenant applied for an order that the Landlord return all or part of the security deposit, pursuant to the *Residential Tenancy Act* (the "Act"):

The hearing was scheduled for 1:30pm on November 30, 2020 as a teleconference hearing. Only the Tenant attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Notice of the Adjourned Hearing and documentary evidence package was served to the Landlord by registered mail on August 20, 2020. The Tenant provided the tracking information during the hearing in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on August 25, 2020, the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy started on September 2, 2019. During the tenancy the Tenant was required to pay rent in the amount of \$520.00 to the Landlord which was due on the first day of each month. The Tenant stated that he paid a security deposit in the amount of \$520.00 which the Landlord continues to hold. The Tenant stated that the tenancy ended on March 24, 2020. The Tenant provided a copy of the tenancy agreement in support.

The Tenant stated that he provided the Landlord with his forwarding address and request for the return of his security deposit by registered mail on April 6, 2020. The Tenant stated that the registered mail was returned to him as it was not claimed. The Tenant provided the registered mail tracking information during the hearing. The Tenant stated that he also emailed his forwarding address to the Landlord on May 1, 2020. The Tenant provided confirmation of the email sent.

The Tenant stated that he has not yet received any amount of his security deposit from the Landlord. The Tenant stated that he did not consent to the Landlord retaining any amount of his deposit.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenant vacated the rental unit on March 24, 2020 and provided the Landlord with his forwarding address by registered mail on April 6, 2020. In accordance with Section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on April 11, 2020, the fifth day after the registered mailing.

As there is no evidence before me that that the Landlord was entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until April 26, 2020 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$520.00 x 2 = \$1,040.00)

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$1,040.00**.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,040.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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 30, 2020

Residential Tenancy Branch