



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR**

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.
- A monetary order for one month's rent as compensation pursuant to section 49 and 67.

This hearing was adjourned to this date from an ex parte Decision.

JS attended on behalf of both tenants ("the tenant"). The landlord attended. Both parties had the opportunity to call witnesses, present affirmed testimony and submit written evidence. The landlord acknowledged receipt of the Notice of Hearing and evidentiary materials. I find the tenant served the landlord as required under the Act.

The tenant testified he did not receive the landlord's evidence. The landlord acknowledged they did not send their evidence to the tenant. As the landlord's evidence was not served in accordance with the Act, I will not consider the landlord's documentary evidence in my decision.

I will only consider relevant evidence submitted and served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to return the security deposit pursuant to section 38;

- A monetary order for one month's rent as compensation pursuant to section 49.

Background and Evidence

The parties agreed as follows. They entered into a fixed term tenancy agreement beginning on April 1, 2020 for monthly rent of \$1,080.55 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$500.00. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant submitted a copy of the agreement.

The parties agreed the landlord served a Four Month Notice To End Tenancy ("the Notice") on the tenant on January 1, 2020 effective April 1, 2020. The parties also agreed that the landlord did not provide the tenant with one month's rent as compensation prior to the tenant vacating the unit.

The tenant summarized the claim in his application which stated in part as follows:

[YN], the landlord, gave us a Four Month Notice to end Tenancy for Renovations and Repairs on January 31, 2020. The application stated that he was completing renovations and repairs in the basement suite and he forced us to move out of the unit.

We found a new place and we moved out during the COVID 19 Epidemic on March 15, 2020. We delivered a Move letter with our keys, granted a Move-out inspection, and contact information.

There was no contact for Move-out inspection or report. We sent a registered letter to request for security deposit, last month's rent, and expenses on July 27, 2020.

The tenant testified that the parties verbally agreed with the landlord that the tenant would vacate on March 15, 2020; the tenant provided more than ten days notice. The landlord acknowledged the tenant paid rent for the month of March 2020 and no rent is outstanding. The tenant testified the landlord showed the unit to prospective occupants in early March 2020 prior to the tenant moving out; the tenant stated this indicated the landlord was aware that the tenant was vacating the unit in mid-March 2020.

As stated above, the tenant testified he provided a forwarding address to the landlord by registered mail at the end of the tenancy; the tenant submitted a copy of the letter as evidence. The landlord acknowledged receipt of the letter but expressed confusion about another address purportedly submitted by the tenant, which was denied by the tenant.

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

The landlord testified the tenant owed money to the landlord for damages and cleaning. The landlord acknowledged the landlord has not brought any application for compensation or authorization to retain the security deposit. The tenant denied owing the landlord any money for damages or compensation.

The tenant requested one month's rent as compensation under section 49. The tenant also 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.

The tenant requested is summarized in the following table:

ITEM	AMOUNT
Compensation - one month's rent	\$1,080.55
Security deposit	\$500.00
Security deposit doubled	\$500.00
TOTAL AWARD REQUESTED – TENANT	\$2,080.55

The landlord requested the tenant's claim be dismissed without leave to reapply as the tenant vacated early without the landlord's consent and the tenant damaged the unit.

Analysis

Credibility and Weight of Evidence

It is up to the party making a claim to establish it on a balance of probabilities, that is, that the claim is more likely than not to be true.

During the hearing, I found the tenant to be credible, straightforward and candid. I found that the tenant's evidence was supported in all key aspects by the tenant's submitted documents. I find that the landlord unreasonably and without valid reasons denied many

claims of the tenant even though the facts he alleged were well supported by evidence. For example, the landlord testified he did not return the security deposit as he had two forwarding address, an assertion that was denied by the tenant and for which no documentary evidence was submitted. I therefore find that the landlord's evidence was unreliable.

I give considerable weight to the tenant's evidence. Where their evidence conflicts, I prefer the tenant's version of events.

Security deposit

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 find the tenant provided a deposit of \$500.00.

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 July 27, 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 for a total monetary award of **\$1,000.00**.

One Month's

Rent – Compensation

The parties agreed the landlord issued a Four Month Notice; a copy was submitted as evidence. The Notice stated that the landlord must provide compensation in the amount

of one month's rent. The Notice also stated that the tenant may move out early if the tenant provides written notice ten days in advance and pays a proportion of the rent.

I accept the tenant's evidence as credible that the tenant provided written notice of at least ten days of their intention to vacate the unit on March 15, 2020. I also find the tenant paid rent for the last month of occupancy, being March 2020 which was acknowledged by the landlord. I accept the tenant's affirmed testimony that the landlord was already showing the unit in early March 2020 to prospective occupants prior to their moving out and had accepted the early end date.

The parties agreed the landlord did not provide one month's rent as compensation according to section 51 which states as follows:

Tenant's compensation: section 49 notice

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find the tenant has met the burden of proof that the landlord did not provide one month's rent as compensation as acknowledged by the landlord.

I find the landlord has met the burden of proof with respect to the claims and has met the burden of proof on a balance of probabilities. I find that the tenant is entitled to a monetary award in the amount of one month's rent as compensation.

Summary

In summary, I grant the tenant a monetary award as follows:

ITEM	AMOUNT
Compensation one month's rent	\$1,080.55
Security deposit	\$500.00
Security deposit doubled	\$500.00
TOTAL AWARD – TENANT	\$2,080.55

The landlord may file an Application for Dispute Resolution but has not done so. The landlord is not entitled to an award for compensation at this hearing.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,080.55**.

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 08, 2020

Residential Tenancy Branch