



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE FORT LANGLEY WINE COMPANY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord,

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant, the landlord did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on May 1, 2012 and ended on April 30, 2020. The tenants were obligated to pay \$2000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit which he alleges the landlord still holds. The tenant testified that neither a move in nor move out written condition inspection report was conducted. The tenant testified that he provided his forwarding address on March 29, 2020 to the landlord. The tenant is

seeking the return of double his deposits $\$1000.00 \times 2 = \2000.00 . The tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord's agent testified that the present owner purchased this property in May 2013 and isn't sure if a deposit was ever paid. The agent testified that the previous owner did not advise them of any deposit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The tenant provided documentary evidence to support his testimony that a deposit was paid. The landlord did not return the deposit, nor did he file an application seeking to retain it as required and noted above. I find that the landlord has not acted in accordance with Section 38 of the Act and therefore the return of double the tenants deposit must be given, accordingly the tenant is granted \$2000.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$2100.00. I grant the tenant an order under section 67 for the balance due of \$2100.00. This order may be filed in the Small Claims Court 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: December 11, 2020

Residential Tenancy Branch