



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 was convened as a result of the Tenant's Application for Dispute Resolution by direct request, made on August 19, 2020 (the "Application") and adjourned to a participatory hearing. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on December 17, 2020 as a teleconference hearing. 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 16 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 Application and documentary evidence package was served to the Landlord by registered mail. A copy of the Canada Post registered mail receipt was submitted confirming the mailing took place on September 16, 2020. Based on the oral and written submissions of the Applicant, 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 September 21, 2020, the fifth day after the 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*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on March 1, 2017. The Tenant stated that he paid a security deposit to the Landlord in the amount of \$1,350.00 at the start of the tenancy. The Tenant stated that on March 1, 2018, parties agreed that the Tenant would commence renting the entire rental unit, and that he was required to pay rent in the amount of \$3,900.00 which was due to the Landlord on the first day of each month. The Tenant stated that he was also required to pay a further \$600.00 security deposit, for a total of \$1,950.00 security deposit paid to the Landlord. The Tenant stated that the tenancy ended on July 15, 2020 and that he provided the Landlord with his forwarding address in writing by registered mail on July 30, 2020. The Tenant provided a proof of service in support.

The Tenant stated that he requested the full return of his security deposit in the amount of \$1,950.00 to be returned to him by the Landlord. The Tenant stated that he did not consent to the Landlord retaining any amount of the security deposit and stated that the Landlord has not submitted an application to retain any amount of the Tenant's security deposit. The Tenant stated that he received an e-transfer from the Landlord on July 28, 2020 in the amount of \$575.00. The Tenant stated that he received another e-transfer in the amount of \$1,375.00 on September 1, 2020. The Tenant stated that while the Landlord has returned the full amount of the deposit to the Tenant, it was returned late. As such, the Tenant stated that he feels as though he is entitled to double the amount of his deposit as well as the return of the filing fee.

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 July 15, 2020 and provided the Landlord with his forwarding address by registered mail on July 30, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on August 4, 2020, the fifth day after the registered mailing.

I accept that the Landlord returned a portion of the Tenant's security deposit in the amount of \$575.00 on July 28, 2020. As there is no evidence before me that the Landlord was entitled to retain the remaining portion of the Tenant's 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 August 19, 2020 to repay the remaining deposit in the amount of \$1,375.00 to the Tenant, or make an application for dispute resolution if the Landlord felt entitled to retaining this portion.

I accept that the Landlord returned the remaining portion of the Tenant's security deposit in the amount of \$1,375.00 on September 1, 2020. I find that the Landlord returned this portion of the Tenant's deposit beyond the 15 day time limit, contrary to Section 38 of the *Act*.

In light of the above, and pursuant to section 38(6) of the *Act*, and in accordance with the Residential Tenancy Policy Guideline 17, I find the Tenant is entitled to an award of double the amount of the remaining security deposit that was received beyond the August 19, 2020 time limit ($\$1,375.00 \times 2 = \$2,750.00$), less the amount the Tenant received on September 1, 2020 ($\$2,750.00 - \$1,375.00 = \mathbf{\$1,375.00}$).

Having been successful, I also find the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$1,475.00**.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of **\$1,475.00**. 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: December 17, 2020

Residential Tenancy Branch