



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding pursuant to section 38.1 of the *Residential Tenancy Act* (the “*Act*”) and dealt with an Application for Dispute Resolution by the Tenant for a monetary order for the return of double the security deposit and to recover the filing fee paid to make the application.

The Tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on December 15, 2020, the Tenant served the Notice of Direct Request Proceeding and supporting documents on the Landlord by registered mail. The Tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the Tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received the Direct Request Proceeding documents on December 20, 2020, five days after they were mailed to the Landlord.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on January 14, 2019, indicating a monthly rent of \$1,000.00 and a security deposit of \$500.00, for a tenancy commencing on February 1, 2019;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated October 23, 2020;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit which indicates that the forwarding address was provided to the Landlord by leaving the forwarding address in a mailbox or mail slot at the address where the Landlord resides or carries on business as Landlord on October 26, 2020;
- A copy of an Interac e-Transfer receipt dated January 14, 2019, for \$1,500.00 which included a rent payment (\$1,000.00) and the security deposit (\$500.00); and
- A copy of a Tenant's Direct Request Worksheet dated December 12, 2020 showing the amount of the security deposit paid by the Tenant (\$500.00), an authorized deduction (\$25.00), a partial reimbursement (\$250.00), and indicating the tenancy ended on October 1, 2020.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the Tenant paid a security deposit in the amount of \$500.00, as per the tenancy agreement and the Interac e-Transfer receipt submitted by the Tenant. I also find that the Tenant permitted the Landlord to retain \$25.00 and that the Landlord returned only \$250.00 to the Tenant by cheque dated November 3, 2020.

I also accept the following declarations made by the Tenant on the Tenant's Direct Request Worksheet:

- The Tenant has not provided consent for the Landlord to keep more than \$25.00 of the security deposit;
- There are no outstanding monetary orders against the Tenant for this tenancy; and
- The Tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the Tenant's statement on the Tenant's Direct Request Worksheet that the tenancy ended on October 1, 2020.

In accordance with sections 88 and 90 of the *Act*, I find that the Landlord is deemed to have received the Tenant's forwarding address on October 29, 2020, three days after it was left in a mailbox or mail slot at the address where the Landlord resides or carries on business as Landlord. Further, I accept the evidence before me that the Landlord did not return the security deposit in full to the Tenant and did not file an Application for Dispute Resolution requesting to retain the security deposit by November 13, 2020, within the fifteen days granted under section 38(1) of the *Act*.

The condition of a rental unit at the end of a tenancy is not a relevant factor when considering a tenant's application to receive double the amount of a security deposit or pet damage deposit.

Based on the foregoing, I find that the Landlord must pay the Tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Policy Guideline #17 provides examples that help determine the amount of the security deposit to be paid to the Tenant. I find the following example is most like the current circumstances:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 (\$400 - \$100 = \$300 x 2 = \$600 less amount actually returned \$250).

[Reproduced as written.]

Therefore, as of the date of this application, January 5, 2021, I find that the Tenant is entitled to a monetary award in the amount of \$700.00, which has been calculated as follows:

$$\$500.00 - \$25.00 = \$475.00$$

$$\$475.00 \times 2 = \$950.00$$

$$\$950.00 - \$250.00 = \underline{\underline{\$700.00}}$$

As the Tenant was successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

The Tenant is granted a monetary order in the amount of \$800.00 (\$700.00 + \$100.00).

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a monetary order in the amount of \$800.00 for the return of double the security deposit and for recovery of the filing fee. The monetary order must be served on the Landlord. The monetary 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: January 5, 2021

Residential Tenancy Branch