



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*”). The application dealt with an Application for Dispute Resolution filed 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 16, 2020, the Tenant served the Landlord with the Notice of Direct Request Proceeding and supporting documents by registered mail. The Tenant provided a copy of Canada Post receipts 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 these documents on December 21, 2020, five days after they were mailed.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit and a pet damage 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 for the period from July 1, 2019 to June 30, 2020, signed by the Landlord and the Tenant, indicating a monthly rent of \$2,650.00 and payment of a security deposit of \$1,325.00;
- A copy of a residential tenancy agreement for the period from July 1, 2020 to December 31, 2020, signed by the Landlord and the Tenant, indicating a monthly rent of \$2,650.00 and payment of a security deposit of \$1,325.00 (previously paid);
- A copy of an email exchange between the Tenant and the Landlord dated September 29, 2020, attached to which was the Tenant's notice to vacate in which the Tenant advised of her intention to vacate the rental unit on October 31, 2020;
- A copy of an email exchange between the Tenant and the Landlord dated November 14, 2020, in which the Tenant provided a forwarding address and requested the return of the security deposit;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the Landlord's address for service by email on November 14, 2020; and
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the Tenant (\$1,325.00) and indicating the tenancy ended on October 31, 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 \$1,325.00, as indicated in the tenancy agreement.

I 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 all or part of the deposits;
- 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 31, 2020. Despite the potential ambiguity in the tenancy agreement, the parties agreed the Tenant was entitled to end the tenancy by providing one month's notice of her intention to vacate. Further, section 44(1)(d) of the *Act* confirms that a tenancy ends when a tenant vacates or abandons the rental unit. Finally, in the email exchange dated September 29, 2020, described above, the Landlord acknowledged receipt of the Tenant's notice to vacate and stated:

Thank you for sending this to me. I'm sad to see you go, but I understand and respect your decision to do so.

Your damage deposit will be returned after final inspection...

Please let me know how you would like to proceed in terms of showing the unit to future prospective tenants...

In accordance with sections 88 and 90 of the *Act*, I find that the Landlord was served with and received the Tenant's forwarding address on November 14, 2020, the day it was emailed to the Landlord.

I accept the evidence before me that the Landlord has failed to return the security deposit to the Tenant and has not filed an Application for Dispute Resolution requesting to retain the security deposit by November 29, 2020, within the fifteen days granted under section 38(1) of the *Act*.

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*.

Therefore, as of the date of this application, January 8, 2021, I find that the Tenant is entitled to a monetary award in the amount of \$2,650.00 (\$1,325.00 x 2), the amount claimed by the Tenant for double the security deposit.

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.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a monetary order in the amount of \$2,750.00 for the return of double the security deposit (\$2,650.00) and for the recovery of the filing fee for this application (\$100.00). 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 British Columbia (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 8, 2021

Residential Tenancy Branch