



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BTC Student Housing Kelowna
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was reconvened in response to an application by the Tenant claiming return of the security deposit pursuant to section 38 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The following are agreed facts: On March 31, 2020 the Tenant paid a security deposit of \$500.00 and on April 6, 2020 the Tenant signed a tenancy agreement for a tenancy start date of September 1, 2020. The Tenant did not move into the unit. The Landlord did not return the security deposit and has not made an application to claim against the security deposit.

The Tenant states that it repudiated the tenancy agreement and informed the Landlord of this repudiation in June 2020. The Tenant states that it provided its forwarding address to the Landlord by mail on October 9, 2020. The Landlord states that they only knew of the Tenant’s intention to end the tenancy on August 27, 2020 when they received the Tenant’s email asking the Landlord to list the unit for rent. The Landlord

states that it received the forwarding address on October 17, 2020. The Landlord argues that the tenancy is still ongoing.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the agreed facts that the Tenant never moved into the unit and the Landlord's evidence that it was aware that the Tenant was not going to move into the unit at least by August 27, 2020, I find on a balance of probabilities that the tenancy was ended no later than August 27, 2020. Given the agreed facts that the Landlord received the Tenant's forwarding address after this date and did not return the security deposit or make an application to claim against the security deposit, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,000.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, 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 Act.

Dated: February 02, 2021

Residential Tenancy Branch