



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS, FFT

Introduction

On November 14, 2020, the Tenant submitted a Direct-Request Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the return of the security deposit and to recover the cost of the filing fee. The matter was assessed by an adjudicator and adjourned to a participatory hearing via conference call.

The Tenant and her advocate attended the conference call hearing; however, the Landlord did not attend at any time during the 35-minute hearing. The Tenant testified that the Landlord was served with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on November 23, 2020. The Tenant provided a Canada Post tracking number and stated that, according to the Canada Post website, the package was delivered to the Landlord on November 24, 2020. As a result, I find that the Landlord has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Tenant.

Issues to be Decided

Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant provided the following undisputed testimony and evidence:

The month-to-month tenancy began on August 1, 2020. The rent was \$1,400.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$700.00. A copy of the Tenancy Agreement was submitted.

The Tenant submitted the e-transfer receipt showing that she paid the \$700.00 security deposit to the Landlord on June 24, 2020.

The Tenant did not ever fully move into the rental unit and although the tenancy was a month-to-month, the Landlord attempted to hold the Tenant accountable for a fixed-term of one year. The Tenant returned to China in July 2020 and kept paying rent to the Landlord.

On September 10, 2020, the Tenant, via an advocate, personally served the Landlord a one-month Notice to End Tenancy. The notice included the Tenant's forwarding address. A copy of the notice was submitted as evidence.

The Tenant submitted a receipt, dated September 19, 2020, that was signed by the Landlord acknowledging that the end of tenancy would be October 31, 2020 and that the Tenant paid for the full month's rent for October 2020.

The Tenant stated that the Landlord never arranged or conducted a move-in or move-out condition inspection of the rental unit.

The Tenant testified that the Landlord has not returned the security deposit and requests that the Landlord be ordered to return the security deposit.

Analysis

Section 38 of the Act states that a landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

In this case, I accept the Tenant's undisputed testimony and evidence that they paid a security deposit of \$700.00 to the Landlord as a required term of the Tenancy Agreement. I find that the Tenant served notice to the Landlord on September 10, 2020 that the tenancy was ending on October 31, 2020; requested their \$700.00 security deposit; and, notified the Landlord of their forwarding address in a letter which was served in accordance with Sections 88 and 90 of the Act. I accept that the tenancy ended on October 31, 2020.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the outstanding security deposit for a total of \$1,400.00, pursuant to Section 38 of the Act.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of \$1,500.00, in accordance with section 38 and 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: March 02, 2021

Residential Tenancy Branch