



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 16, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order that the Landlord return all or part of the security deposit; and
- an order granting the return of the filing fee.

The Tenant, the Landlord, and the Landlord's Agent E.A. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Sections 51, and 67 of the *Act*?
2. Is the Tenant entitled to the return of their security deposit, pursuant to Section 38 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2017. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$5,436.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$2,652.00 which the Landlord continues to hold. The tenancy ended on September 15, 2020 before the Landlord received the Tenant's forwarding address in writing on October 16, 2020.

The Tenant is seeking monetary compensation in relation to the Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two Month Notice") dated July 20, 2020, with an effective vacancy date of September 30, 2020. The Tenant submitted a copy of the Two Month Notice in support. During the hearing, the parties agreed that the Tenant complied with the Two Month Notice and moved out of the rental unit earlier than the effective date of the Two Month Notice, on September 15, 2020.

The parties agreed that the Tenant did not pay rent to the Landlord from September 1 to 15, 2020, therefore the Tenant has been compensation half a month of rent. The Tenant is seeking the additional half month of rent that he feels he is owed equivalent to one month of rent. During the hearing, the Landlord agreed that the Tenant is owed a further half month of rent in the amount of \$2,718.00, however, the Landlord stated that she felt entitled to retaining a portion of this amount as the Tenant caused damage to the rental unit.

The parties agreed that the Landlord sent the Tenant a cheque in the amount of \$1,026.00 which represents a portion of the compensation owed to the Tenant less the deductions that the Landlord felt entitled to retaining. The Tenant stated that he has not yet deposited the cheque as he was not in agreement of the monetary amount he received from the Landlord.

The Tenant is also claiming for double the amount of his security deposit as the Landlord has not yet returned his deposit. The parties agreed that the tenancy ended on September 15, 2020 and that the Landlord received the Tenant's forwarding address in writing on October 16, 2020. The Tenant stated that he did not agree in writing that the Landlord could retain any portion of his deposit. The Landlord stated that she felt entitled to retaining the Tenant's security deposit as a result of the damage caused by the Tenant to the rental unit.

If successful, the Tenant is also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] the tenant may end the tenancy early by;

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51(1) of the *Act* states;

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, I accept that the Landlord served the Tenant with a Two Month Notice dated July 20, 2020 with an effective date September 30, 2020. I accept that the Tenant complied with the Two Month Notice and moved out of the rental unit on September 15, 2020. During the hearing, the parties agreed that the Tenant is entitled to a further half month of rent, however the Landlord only returned \$1,026.00 of the compensation owed which should have been equivalent to another half month of rent, or \$2,718.00. I find that the Landlord was not entitled to deduct a portion of this compensation owed to the Tenant. As such, I find that the Tenant is entitled to monetary compensation in the amount of **\$2,718.00** which is the remaining portion payable to the Tenant, pursuant to Section 51 of the *Act*.

The Tenant is also claiming for double the return of the security deposit. 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 September 15, 2020 and provided the Landlord with his forwarding address which the Landlord confirmed having received on October 16, 2020.

As there is no evidence before me that that the Landlord was entitled to retain any portion of the 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 October 31, 2020 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$2,652.00 x 2 = **\$5,304.00**)

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

Pursuant to sections 38, 51, 67, and 72 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$8,122.00**.

Conclusion

The Landlord breached Section 51 and 38 of the Act. The Tenant is granted a monetary order in the amount of \$8,122.00. 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: March 09, 2021

Residential Tenancy Branch