



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 17, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 3, 2021 as a teleconference hearing. Only the Tenant appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 12 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

Preliminary Matters

The Tenant was granted a Substituted Service Order on December 8, 2020 allowing the Tenant to serve the Landlord via email. The Tenant had initially applied for the return of her security deposit through direct request, however, the Application was adjourned to a participatory hearing according to the interim decision dated December 31, 2020. The Tenant stated that she served the above-mentioned documents to the Landlord on December 31, 2020. I find based on the Tenant's oral testimony and documentary evidence that these documents are deemed to have been received by the Landlord on January 3, 2021.

The Tenant was 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.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on March 1, 2020 and ended on October 31, 2020. During the tenancy, rent was due in the amount of \$950.00 per month. The Tenant testified that she paid a security deposit of \$475.00 to the Landlord. The Tenant provided a copy of the tenancy agreement in support.

The Tenant testified that she sent the Landlord her forwarding address via email on November 1, 2020 requesting the return of her deposit. The Tenant provided a copy of the email, as well as the subsequent response from the Landlord on November 3, 2020 confirmed receipt in support. The Tenant stated that she did not consent to the Landlord deducting any amount of the deposit, and that the Landlord has failed to return the Tenant's security deposit or make a claim to retain it. As such, the Tenant is seeking the return of double the amount of her deposit as well as the filing fee paid to make the Application.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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 October 31, 2020 and provided the Landlord with her forwarding address by email on November 1, 2020. I accept that the Landlord received the Tenant's forwarding address on November 3, 2020 as indicated in the Landlord's email reply to the Tenant. I find the Tenant's forwarding address was sufficiently served to the Landlord, pursuant to Section 71 of the *Act*.

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 November 18, 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 (\$475.00 x 2 = **\$950.00**)

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

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$1,050.00**.

Conclusion

The Landlord breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$1,050.00. 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: May 03, 2021

Residential Tenancy Branch