



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction, Preliminary and Procedural Matters-

This telephone conference call hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The hearing began at 1:30 p.m. Pacific Time on Tuesday, May 25, 2021, as scheduled and the telephone system remained open and was monitored for 11 minutes. During this time, the landlord did not call into the hearing; however, the tenant was present and ready to proceed with the hearing.

I continued the hearing for 11 minutes, in order to allow the landlord to call into the hearing.

While waiting for the landlord to appear, the tenant was affirmed and gave testimony in response to this application.

The tenant submitted that he provided his written forwarding address to the landlord on August 30, 2020, the last day of the tenancy, on the condition inspection report (Report). The landlord submitted a copy of the Report, which confirmed the tenant's testimony.

The tenant said that the landlord previously made an application, but later withdrew that application before a hearing. The tenant expressed frustration that the landlord has retained his security deposit for nine months after the tenancy ended.

The tenant confirmed his forwarding address, which was on the Report.

Analysis

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the 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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord at the hearing, I order the landlord's application **dismissed, without leave to reapply**.

As I have dismissed the landlord's monetary claim for damages against the tenant, I find the tenant is entitled to a return of his security deposit.

Under section 38(1) of the Act, at the end of a tenancy, a landlord is required to either return a tenant's security deposit or file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

The tenant submitted information that the landlord had made an earlier application against him; however, that application was withdrawn by the landlord. I find that the landlord withdrawing their application had the same effect of not having filed an application claiming against the tenant's security deposit. Additionally, the landlord failed to attend the hearing and was unable to provide details about another application.

I therefore find the landlord was obligated to return the tenant's security deposit, in full, no later than September 14, 2020, 15 days after the date of the end of the tenancy and receiving the tenant's written forwarding address, both on August 30, 2020.

In addition to the requirements of the Act, Tenancy Policy Guideline 17.11 also states that if the landlord fails to return the tenant's security deposit, the landlord must pay the tenant double their security deposit.

I therefore **order** the landlord to return the tenant's security deposit and that this amount must be doubled.

I therefore find the tenant is entitled to and I grant a monetary order to the tenant in the amount of \$3,700, comprised of his security deposit of \$1,850, doubled to \$3,700.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord has been ordered to pay the tenant the amount of \$3,700, which is the amount of his security deposit of \$1,850, doubled.

The tenant is granted a monetary order in the amount of that deposit in the amount of \$3,700 in the event the landlord does not comply with this order.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 25, 2021