



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT, RPP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 10, 2021 (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;
- a monetary order for damage or compensation;
- an order for the return of personal property; and
- an order granting recovery of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find that they were sufficiently served pursuant to Section 71 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.

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 a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to an order for the return of personal property, pursuant to Section 65 of the *Act*?
4. 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 stated that her tenancy began sometime around November 2011. The parties agreed that the Landlords purchased the rental property in July of 2016. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,039.00 which was due on the first day of each month. The parties agreed that the Tenant paid a security deposit in the amount of \$445.00 as well as a pet damage deposit in the amount of \$445.00 for a total of \$890.00 currently being held by the Landlords. The parties agreed that the tenancy ended on February 2, 2021.

The Tenant has applied for the return of her security and pet damage deposits. The Tenant testified that she sent the Landlords her forwarding address by text message on February 12, 2021. The Landlord confirmed receipt on the same day. The Tenant stated that she did not consent to the Landlords retaining the deposits. As such, the Tenant is seeking the return of double the amount of his deposit. The Landlords confirmed that they have not yet returned the deposits to the Tenant, nor have they applied to retain the Tenant's deposit should they feel entitled to compensation.

The Tenant is also claiming for the return of her personal property. The Tenant stated that she left a doghouse at the rental unit as she was unable to move it herself. The Tenant stated that there were other items which were left inside the doghouse. The parties agreed that there was some communication between them with respect to the Tenant returning to collect these items. The Landlords stated that the Tenant did not return to collect the items, therefore, after over a month of holding onto the items, the Landlords decided to donate them.

The Tenant stated that the items were important to her and that she was unable to collect the items as it required several adults to move the doghouse which was quite heavy. The Tenant stated that her moving plans fell through and that she was unable to find someone to remove the items from the rental property. The Tenant is claiming \$750.00 for the cost associated with replacing the items that were removed by the Landlords. If successful, the Tenant is also seeking the return of 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 parties agreed that the Tenant vacated the rental unit on February 2, 2021 and provided the Landlords with her forwarding address on February 12, 2021 by text message. As the Landlords confirmed receipt of the Tenant's forwarding address on February 12, 2021, I find that the Tenant's forwarding address was sufficiently served to the Landlords pursuant to Section 71 of the *Act*.

As there is no evidence before me that that the Landlords were entitled to retain any portion of the security and pet damage deposits under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until February 27, 2021 to repay the deposits or make an application for dispute resolution. The Landlords 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 (\$890.00 x 2 = **\$1,780.00**). Should the Landlords feel entitled to monetary compensation for damages or loss, they are at liberty to submit an Application for Dispute Resolution.

With respect to the Tenant's claim for the return of her personal property, I accept that the Landlords have donated the items. As such, I am unable to order that the Landlords to return the property to the Tenant as it is no longer in their possession. I therefore dismiss this claim without leave to reapply.

The Tenant is claiming \$750.00 as compensation for the loss of her personal possession. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find that the Tenant has provided insufficient evidence to support the value of her loss. Furthermore, I find that the Tenant did not mitigate her loss as she left her personal possession behind for over a month beyond the end of the tenancy. I therefore dismiss the Tenant's monetary claim for loss without leave to reapply.

Having been partially 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 **\$1,880.00**.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,880.00. 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: June 21, 2021

Residential Tenancy Branch