



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on March 1, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit;
- a monetary order for damage or compensation; 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 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.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlords 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 granting recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The parties testified and agreed that the tenancy began on April 1, 2016. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,795.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00. The tenancy ended on January 31, 2021.

The Tenant is claiming for the return of his security deposit. The parties agreed that the Tenant provided the Landlords with his forwarding address in writing on December 17, 2021, as it was included in his notice to end tenancy. The parties agreed that the Landlords sent the Tenant a cheque in the amount of \$850.00 which represents the full return of the Tenant's pet damage deposit.

The parties agreed that the Landlord sent the Tenant another cheque in the amount of \$550.00 which represents a portion of the Tenant's security deposit less \$300.00 that the Landlords felt entitled to keeping for further cleaning of the rental unit. The Tenant stated that he did not consent to the Landlords keeping any amount of his security deposit. The Landlords confirmed that while they felt entitled to keeping \$300.00, they did not submit an application to the Residential Tenancy Branch to do so.

During the hearing, the Tenant stated that he had not yet cashed the two cheques provided by the Landlords. The Landlords confirmed that the Tenant is at liberty to deposit the cheques and that the amounts would clear.

The Tenant is also claiming \$28.90 which is the amount of utilities that the Landlords charged in addition to the bill amount provided to the Tenant. The parties agreed that the Tenant was responsible for paying 40 percent of the utilities to the Landlord during the tenancy. The parties agreed that the billing cycle ended on January 23, 2021, however, the Tenant occupied the rental unit until January 31, 2021. The Landlord added the daily average for the remaining days of the month that had not been accounted for in the invoice. The Tenant argued that he would have paid for these days at the start of the tenancy after the last occupant moved out. The Landlords did not agree with the Tenant's assessment.

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 Tenant provided the Landlords with his forwarding address in writing on December 17, 2021 and vacated the rental unit on January 31, 2021. The Landlords confirmed receipt of the Tenant's forwarding address on the same date.

I accept that the Tenant received two cheques from the Landlords; one in the amount of \$850.00 which represents the full return of the pet damage deposit. I accept the Landlords sent a further \$550.00 which represents a portion of the Tenant's security deposit, less \$300.00 which the Landlords retained without the Tenant's consent.

As there is no evidence before me that that the Landlords were entitled to retain the \$300.00 portion of the Tenant's security deposit 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 15, 2021 to repay the remaining deposit in the amount of \$300.00 to the Tenant, or make an application for dispute resolution if the Landlords felt entitled to retaining this portion. The Landlords did neither. As such, I find that the Landlords breached Section 38 of the *Act*.

The Residential Tenancy Branch Policy Guideline #17 requires the arbitrator double the Tenant's security deposit ($\$850.00 \times 2 = \$1,700.00$), then deduct the amount already returned to the Tenant ($\$1,700.00 - \550.00), to determine the amount of the monetary order **\$1,150.00**.

The Tenant is also at liberty to deposit the cheques that the Landlord had previously sent the Tenant in the amounts of \$850.00 and \$550.00.

With respect to the Tenant's claim for \$28.90, I find that it is reasonable to expect that the Tenant pay the average utility consumption cost for the remaining days that he occupied the rental unit as it had not been reflected in the utility bill. I find that the Tenant provided insufficient evidence to demonstrate that he paid these costs at the start of the tenancy. As such, I dismiss this claim 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 \$1,250.00.

Conclusion

The Landlords breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,250.00. 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: July 19, 2021

Residential Tenancy Branch