



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDCL-S, MNDL-S, FFL
 TT: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on May 11, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on May 17, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

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

The Landlord, the Landlord’s Agent M.M., and the Tenant S.D. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service and receipt of their respective Applications and documentary evidence packages.

Preliminary Matters

During the hearing, it was found that the Landlord provided the Residential Tenancy Branch (RTB) a blank monetary worksheet containing no information outlining the claims they are seeking. Furthermore, it became apparent that the evidence provided by

the Landlord to the RTB was different than the evidence that the Landlord provided to the Tenant.

According to Section 59 (2) of the *Act*, An application for dispute resolution must;

- (a) be in the applicable approved form,
 - (b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings**, and
 - (c) be accompanied by the fee prescribed in the regulations.
- (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.
- (5) **The director may refuse to accept an application for dispute resolution if**
- (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
 - (b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or
 - (c) **the application does not comply with subsection (2).**

Furthermore according to the Residential Tenancy Branch Rules of Procedure 2.5

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- **a detailed calculation of any monetary claim being made;**
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

In addition, the Rules of Procedure 3.7 states Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

I find that the Landlord has not complied with Section 59 of the Act, nor with the Rule of Procedure 2.5 and 3.7. As such I dismiss the Landlord's Application with leave to reapply. Leave to reapply does not extend any statutory timelines.

The hearing continued based on the Tenants' Application for the return of their security deposit and the filing fee.

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 parties testified and agreed to the following; that the tenancy began on April 1, 2020 and ended on April 30, 2021. During the tenancy, rent was due in the amount of \$4,500.00 per month. The Tenants paid a security deposit in the amount of \$2,250.00 which the Landlord continues to hold. The tenancy ended on April 30, 2021.

The Tenant stated that he provided the Landlord with his forwarding address on or before May 3, 2021. The Landlord confirmed having received the Tenant's forwarding address on May 3, 2021. The Tenant stated that he did not consent to the Landlord withholding the Tenant's security deposit. The Landlord applied to retain the security deposit on May 11, 2021 for damage and loss. As previous noted, the Landlord's Application is dismissed with leave to reapply.

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.

In this case, I accept that the Tenants vacated the rental unit on April 30, 2021 and provided the Landlord with their forwarding address which was confirmed to have been received by the Landlord on May 3, 2021.

I find that after receiving the Tenant's forwarding address, the Landlord submitted her Application within the 15 days permitted under the Act. As the Landlord's Application was dismissed, I find that the Landlord is not entitled to retaining the Tenant's security deposit.

In light of the above, I find that the Tenants are entitled to the full return of the Tenants' security deposit in the amount of **\$2,250.00**.

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

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of **\$2,350.00**.

Conclusion

The Landlord's Application is dismissed with leave to reapply. The Tenants' Application for the return of their security deposit is successful. The Tenants are granted a monetary order in the amount of \$2,350.00. The monetary order must be served on the Landlord and may be filed in and enforced as an order of the Provincial Court of British Columbia (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: November 10, 2021

Residential Tenancy Branch