



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 31, 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; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on November 30, 2021 as a teleconference hearing. Only the Tenant appeared at the appointed date and time. No one appeared for the Landlords. The conference call line remained open and was monitored for 10 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.

The Tenant testified the Application and documentary evidence package was served on the Landlords by registered mail on June 18, 2021. A copy of the Canada Post registered mail receipts were submitted in support. The Tenant stated that she sent the packages to each Landlord at their address for service which was listed in the tenancy agreement and also on their business card. The Tenant stated that the mailings were later returned to her as unclaimed.

Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Application and documentary evidence on June 23, 2021, the fifth day after their registered mailing. The Landlords did not submit any documentary evidence in response to the Application.

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 Landlords 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, 2019 and ended on April 30, 2021. During the tenancy, rent in the amount of \$1,650.00 was due to be paid to the Landlords on the first day of each month. The Tenant testified that she paid a security deposit of \$825.00 to the Landlords. The Tenant provided a copy of the tenancy agreement in support.

The Tenant testified that she provided the Landlords her forwarding address in writing on April 30, 2021 during the move out condition inspection. The Tenant stated that she wrote her forwarding address on the condition inspection report. The Tenant provided a copy of the report in support. The Tenant stated that she did not consent to the Landlords deducting any amount of the deposit, and that the Landlords have yet 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 his 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 April 30, 2021 and provided the Landlord with her forwarding address in writing during the condition inspection of the rental unit on April 30, 2021. In accordance with Section 90 of the *Act*,

I find that the Landlords are deemed to have been served with the Tenant's forwarding address on April 30, 2021.

As there is no evidence before me that the Landlords were 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 Landlords had until May 15, 2021 to repay the deposit 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 Landlords (\$825.00 x 2 = **\$1,650.00**)

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 \$1,750.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$1,750.00. 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: November 30, 2021

Residential Tenancy Branch