



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 14, 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 Tenant and the Landlord's Agent E.L. 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 there were no issues raised, I find the above mentioned documents 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 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; the tenancy began on January 15, 2019 and ended on May 14, 2021. During the tenancy, rent was due in the amount of \$2,200.00 per month. The Tenant paid a security deposit in the amount of \$1,100.00 which the Landlord continues to hold. A copy of the tenancy agreement was provided in support.

The Tenant testified that she sent the Landlord her forwarding address in writing by regular mail on June 10, 2021, which was mailed to the Landlord's address for service. The Tenant provided a copy of the receipt for the regular mail, dated June 10, 2021, a picture of the envelope, and well as a copy of the letter containing the Tenant's forwarding address which is addressed to the Landlord. The Tenant stated that she followed up with the Landlord by text message after she sent the letter, however, they did not respond.

The Tenant stated that she did not consent to the Landlord deducting any amount of the deposit, and that the Landlord has failed 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 her deposit as well as the filing fee paid to make the Application.

The Landlord's Agent stated that the Landlord did not received the Tenant's forwarding address until it was included in the Tenant's Application package for dispute resolution. The Landlord's Agent stated that it is possible that the Landlord did not receive the Tenant's text messages as they experienced some cellular downtime. The Landlord's Agent stated that the Landlord felt entitled to retaining the Tenant's security deposit in relation to some unpaid utilities and damage caused to a window.

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 May 14, 2021 and provided the Landlord with her forwarding address by regular mail on June 10, 2021. While the Landlord's Agent stated that the Landlord did not receive the mailing, I find that the Tenant provided sufficient evidence that she sent her forwarding address to the Landlord's address for service on June 10, 2021. In accordance with Section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on June 15, 2021, the fifth day after the mailing.

I find that the Tenant made additional attempts at having her security deposit returned, by texting the Landlord who did not reply. As there is no evidence before me that that

the Landlord was 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 Landlord had until June 30, 2021 to repay the deposit or make an application for dispute resolution. The Landlord 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 (\$1,100.00 x 2 = **\$2,200.00**)

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 **\$2,300.00**.

Conclusion

The Landlord breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$2,300.00. 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: January 24, 2022

Residential Tenancy Branch