



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSDS-DR FFT

Introduction

The tenant seeks the return, and doubling, of her security deposit pursuant to sections 38(1) and 38(6)(b) of the *Residential Tenancy Act* ("Act"). In addition, the tenant requests that the landlord pay her back for the cost of the filing fee.

Procedural Issue: Service

While the tenant attended the hearing, the landlord did not. In such cases where a respondent does not attend a hearing, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and with the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The tenant gave evidence under oath that she served the Notice of Dispute Resolution Proceeding package by registered mail, which is a permitted method of service under section 89 of the Act. The tenant submitted into evidence documentary proof consisting of a Canada Post registered mail tracking number. Canada Post's registered mail tracking website indicates that the landlord signed for the package on July 30, 2021. The signatory's name matches that of the landlord's name.

Given the evidence before me, it is my finding that the landlord was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

Issues

1. Is the tenant entitled to the return, and doubling, of her security deposit?
2. Is the tenant entitled to be compensated for the cost of the filing fee?

Background and Evidence

The tenancy began July 1, 2019 and ended April 30, 2021. Monthly rent was \$1,495.00 and the tenant paid a security deposit in the amount of \$747.50. A copy of the written tenancy agreement was in evidence.

The tenant gave evidence that she provided her forwarding address, in writing, in the condition inspection report on the last day of tenancy. A copy of the condition inspection report was submitted into evidence and it clearly shows the tenant's forwarding address.

The tenant gave further evidence that at no time did she provide written consent for the landlord to retain any or all of the security deposit, and she testified that she is unaware of any application made by the landlord claiming against the security deposit. To date, the landlord has made no effort to return the security deposit.

Analysis

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the landlord failed to repay the tenant's security deposit or make an application for dispute resolution claiming against the security deposit within fifteen days as required by the Act. It is therefore my finding that the landlord had no legal authority to withhold the security deposit and as such must return this deposit.

Next, section 38(6) of the Act must be considered. This section states that

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord did not comply with subsection 38(1) of the Act, the landlord is hereby ordered to pay the tenant double the amount of the security deposit.

Finally, as the tenant succeeded in her application, I grant her request that the landlord pay her \$100.00 for the filing fee pursuant to section 72 of the Act. The tenant is awarded a total of \$1,695.00.

Pursuant to section 67 of the Act the landlord is hereby ordered to pay the tenant \$1,695.00. To give effect to this order, the tenant is granted a monetary order which is issued in conjunction with this decision. Should the landlord fail to pay this amount within 15 days of receiving a copy of this decision or the monetary order, the tenant may file and enforce the monetary in the Provincial Court of British Columbia.

Conclusion

The tenant's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 17, 2022

Residential Tenancy Branch