



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 by direct request, made on September 30, 2022 (the "Application") and was adjourned to a participatory hearing. 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 attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's Application and documentary evidence packaged. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord confirmed that they did not submit any documentary evidence in response to the Application.

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 Tenant testified that the tenancy began on January 1, 2020, while the Landlord was of the impression that the tenancy had commenced sooner, but was unsure what date. The tenancy agreement which had been provided by the Tenant, confirms a tenancy start date of January 1, 2020. The parties agreed that during the tenancy, the Tenant was required to pay rent in the amount of \$1,250.00 which was due on the first day of each month. The parties agreed that the Tenant paid a security deposit in the amount of \$625.00 which the Landlord continues to hold. The parties agreed that the tenancy ended on June 28, 2021.

The Tenant stated that they served their forwarding address in writing to the Landlord by posting it to the Landlord door belonging to the Landlord's address for service on August 29, 2021. The Landlord confirmed receipt, however, could not recall which date it was received.

The Tenant stated that the Landlord has not yet returned any portion of the Tenant's security deposit, nor has the Tenant consented to the Landlord retaining some or all of the Tenant's deposit. As such, the Tenant has applied for the return of their deposit and for the return of the filing fee.

The Landlord confirmed that he has retained the Tenant's security deposit as the Tenant did not pay rent to the Landlord for May and June 2021. The Landlord felt entitled to retaining the Tenant's security deposit as compensation.

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 June 28, 2021 and provided the Landlord with their forwarding address in writing by posting it to the Landlord's door on August 29, 2021. I accept that the Landlord confirmed receipt, however, could not recall the date of receipt. 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 September 1, 2021, three days later.

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 September 16, 2021 to repay the deposit or make an application for dispute resolution should the Landlord felt entitled to monetary compensation for unpaid rent. 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 (\$625.00 x 2 = **\$1,250.00**).

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 **\$1,350.00**.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,350.00. 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: April 25, 2022

Residential Tenancy Branch