Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSDB-DR, FFT

Introduction:

This Tenant filed an Application for Dispute Resolution in which the Tenant applied for double the return of the security/pet damage deposit and to recover the fee for filing this Application for Dispute Resolution. The Residential Tenancy Branch determined that the matter should be determined at a participatory hearing on May 05, 2022.

The Tenant stated that on September 24, 2021 she posted the Dispute Resolution Package on the door of the Landlord's residence. The Landlord stated that her assistant located these documents and that her assistant gave them to her on September 28, 2021. As the Landlord received these documents on September 28, 2021, I find that they were sufficiently served on that date, pursuant to section 71(2)(b) of the *Residential Tenancy Act (Act*) .

In September of 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In December of 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with documents for a separate dispute resolution proceeding. She stated that the package contained one envelope that was marked with the file number for these proceedings and one envelope that was marked with the file number for the other proceedings.

The Landlord stated that her assistant received documents that were sent in December of 2021; that the Landlord was not aware some of those documents were related to

these proceedings; and she did not bring those documents with her to these proceedings.

The parties were advised that I would not be viewing the documents submitted to the Residential Tenancy Branch by the Tenant in December during these proceedings. The Tenant was advised that she would be given an opportunity for an adjournment for the purposes of re-serving those documents if, at the end of the hearing, she wished to have the December evidence considered as evidence during these proceedings. At the conclusion of the hearing the Tenant declined the opportunity to request an adjournment for the purposes of re-serving evidence.

On April 27, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on April 26, 2022. The Tenant stated that she received this evidence on May 02, 2022 and that she has had sufficient time to consider the evidence. As the Tenant has had sufficient time to consider this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Landlord stated that she understood damage to the rental unit would be discussed at these proceedings.

The parties were advised that the only issue to be determined at these proceedings is if the security deposit was properly retained by the Landlord. As such, neither party was permitted to give evidence regarding the condition of the rental unit, as that matter is simply not relevant to the issue before me.

The parties were advised that the Landlord retains the right to file an Application for Dispute Resolution in which she claims compensation for damage to the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of double the security/pet damage deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- The tenancy began in 2018;
- The Tenant paid a security deposit of $1,000.00;
- The Tenant paid a pet damage deposit of $1,000.00;
- this tenancy ended on August 31, 2021;
- the rental unit was jointly inspected on August 31, 2021;
- the Landlord did not complete a condition inspection report during, or after, the inspection on August 31, 2021;
- the Tenant provided the Landlord with a forwarding address, in writing, on August 31, 2021;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit or pet damage deposit, in writing;
- the Landlord did not return any portion of the security deposit or pet damage deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit or pet damage deposit.

The Landlord stated that the rental unit was jointly inspected on April 24, 2018 but she did not complete a condition inspection report on that date.

The Tenant stated that she viewed the rental unit on April 24, 2018 but she did not participate in an inspection of the rental unit for the purposes of completing a condition inspection report on April 24, 2018.

The Landlord and the Tenant agree that the Landlord did not schedule a time and date to complete an initial condition inspection report after April 24, 2018.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security/pet damage deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $4,100.00, which includes double the security/pet damage deposit plus $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 05, 2022

Residential Tenancy Branch