



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution, made on October 27, 2021, and November 18, 2021 (the "Applications"). The Tenant submitted repeated Applications 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/or pet damage deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant's Representative T.K. and the Landlord's Agent J.J. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes 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 Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to a monetary order relating to compensation, pursuant to Section 67 of the *Act*?
3. 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 that the tenancy began on November 7, 2020. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$5,000.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$2,500.00. The tenancy ended on October 12, 2021.

T.K. stated that the Tenant is seeking compensation in the amount of \$394.98 in relation to a fee that the Tenant paid throughout the tenancy, that the Tenant feels should be the Landlord's responsibility to pay. T.K. stated that the fee is related to measuring the amount of utilities that are being consumed, rather than a utility itself.

J.J. stated that according to the tenancy agreement between the parties, the Tenant is required to pay for this service. The tenancy agreement was provided in support. J.J. stated that the Tenant had paid for this service throughout the entire tenancy without issue.

The Tenant is also claiming for the return of their security deposit. The parties confirmed that the Tenant provided the Landlord with their forwarding address by email on October 12, 2021, which was the same date that the tenancy ended. A copy of the email containing the Tenant's forwarding address was provided in support.

J.J. stated that she e-transferred the Tenant \$2,252.73 of the \$2,500.00 security deposit held. J.J. stated that the Landlord felt entitled to retaining \$247.27. J.J. stated that the Tenant never accepted the e-transfer, despite her efforts at reminding the Tenant to accept the e-transfer on two occasions. The Landlord provided a copy of the e-transfer and the reminder emails in support.

T.K. stated that the email address used to return the Tenant's security deposit was not the Tenant's forwarding address. Furthermore, the email address used to return the Tenant's deposit was not associated to any bank account. As such, the Tenant did not

accept the return of the security deposit. J.J. stated that the Landlord continues to hold the full amount of the Tenant's deposit.

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:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming compensation in the amount of \$394.98 in relation to a bill that the Tenant feels should have been the Landlord's responsibility to pay. In this case I accept that the parties agreed at the start of the tenancy that the Tenant would be required to pay the bill. I find that the tenancy agreement specifically sets out that that it is the Tenant's responsibility. I find that the Tenant signed the tenancy agreement confirming their agreement to the specific terms around which bills the Tenant would be responsible for paying. As such, I find that the Landlord did not breach the *Act*, or tenancy agreement. I therefore dismiss this claim without leave to reapply.

The Tenant is also seeking the return of their security deposit.

According to Section 38 of the Act;

(1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

I accept that the tenancy ended on October 12, 2021 and that the Tenant provided the Landlord with their forwarding address by email on October 12, 2021. As such, I find pursuant to section 38(1) of the *Act*, that the Landlord had until October 27, 2021 to repay the deposit to the Tenant. I find that the Landlord e-transferred the Tenant their security deposit to the same email address that the Tenant used to provide their forwarding address to the Landlord on October 12, 2021. I find that using an electric form of payment is accepted under Section 38 of the *Act*.

As such, I find that the Landlord took reasonable action to return the Tenant's deposit within the 15 days permitted under the *Act*. I'm further satisfied that the Landlord followed up with two reminders to the Tenant to accept the returned deposit. The Tenant, having used the email address just 15 days sooner, ought to have accepted the transfer. The Tenant failed to do so. I find that this does not constitute the Landlord's failure to return the Tenant's security deposit.

I find that the Tenant is entitled to the full return of their deposit in the amount of \$2,500.00 which is currently being held by the Landlord. Having been partially 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 \$2,600.00. Should the Landlord feel entitled to their own monetary compensation for unpaid utilities, they are at liberty to submit an application for dispute resolution.

Conclusion

The Tenant is granted a monetary order in the amount of \$2,600 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: July 5, 2022

Residential Tenancy Branch