



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSN
VANCOUVER and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for a return of their security deposit and recovery of the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated June 23, 2022, which should be read in conjunction with this decision.

The adjudicator said they were not able to determine whether the amount of \$4,500 paid was for the security deposit or a combined security deposit and pet damage deposit and therefore ordered the direct request process be reconvened to a participatory hearing.

At the participatory hearing, the tenant attended; however, the landlord did not attend.

The tenant stated they served the landlord with the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on June 24, 2022. The tenant provided the Canada Post-stamped registered mail document containing the tracking number.

I find the tenant submitted sufficient evidence that the landlord was served the tenant's application and notice of this hearing in a manner complying with section 89(1) of the Act, by registered mail. The hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the tenant's submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a return of their security deposit, plus double the amount of the security deposit, and recovery of the cost of the filing fee?

Background and Evidence

Filed into evidence by the tenant was a written tenancy agreement showing the tenancy began on June 1, 2020, for a fixed-term through May 31, 2021. The monthly rent was \$4,500 and the tenant paid a security deposit of \$4,500. The tenancy ended on June 30, 2021, as the landlord was selling the residential property, according to the tenant.

The tenant acknowledged the security deposit was a higher amount than required under the Act.

The tenant filed documentary evidence showing the landlord was given the tenant's written forwarding address in a letter sent by registered mail on July 21, 2021. The Canada Post tracking number and the letter were filed in evidence.

The tenant submitted that they also requested their security deposit multiple times by email, the parties preferred method of communication.

The tenant submitted that they tried many times during the month of July 2021, to arrange a final inspection with the landlord, but the landlord failed to agree to any dates. The tenant submitted that the landlord finally attempted to arrange for a final inspection on August 9, 2021, well after the tenancy ended and after many people were in the rental unit for realtor showings for the sale of the property, as the house sold on August 16, 2021. The tenant submitted proof of the sale.

Analysis

Based on the relevant and undisputed oral and written evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the Act provides 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 any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit. This is a requirement unless the tenant's right to the security deposit has been extinguished under section 38(2).

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, I do not find the tenant's right to a repayment of their security deposit has been extinguished. I find the landlord failed to arrange for a final inspection of the rental unit in a timely manner, or more than a month after the tenancy. This was during a period of realtor showings advancing the sale of the residential property. I find that any attempt by the landlord for a final inspection 1 month and 9 days after the tenancy ended was unreasonable. I find this attempt more in the way of an avoidance of their obligation of returning the tenant's security deposit after having been served with the tenant's written forwarding address.

The evidence shows that the tenancy ended on June 30, 2021, and the tenant provided their written forwarding address by registered mail on July 21, 2021, and the Act states that the letter was deemed to be received on the 5th day, or July 26, 2021.

I therefore find the landlord was obligated to return the tenant's security deposit or file for dispute resolution claiming against the security deposit no later than August 10, 2021, 15 days after the date the tenant's written forwarding address was deemed received.

In contravention of the Act, the landlord kept the security deposit, without filing an application claiming against the security deposit.

I therefore **order** the landlord to return the tenant's security deposit of \$4,500 and that this amount must be doubled.

I grant the tenant recovery of their filing fee of \$100, due to their successful application.

I therefore find the tenant has established a monetary claim of \$9,100, comprised of their security deposit of \$4,500, doubled to \$9,000, and the filing fee paid for this application of \$100.

I grant the tenant a monetary order in the amount of \$9,100.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is granted as they are awarded a monetary award in the amount of \$9,100 as noted above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 09, 2022

Residential Tenancy Branch