



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, MNETC, FFT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 27, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an order granting the return of the filing fee.

Preliminary Matters

The Tenant has submitted a separate application on January 25, 2022 for the return of the Tenant's security deposit by direct request. The Tenant's Application for the return of their deposit was adjourned to a participatory hearing which was meant to be heard at a later date. The Tenant and the Landlord attended the hearing, and both agreed to proceed with both Applications during this hearing. The parties confirmed that they have served and received their respective Applications and documentary evidence packages relating to both files. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

According to the Rules of Procedure 2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria: a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit; b) whether all applications name the same landlord; c) whether the remedies sought in each application are similar; or d) whether it appears that the arbitrator will have to consider

the same facts and make the same or similar findings of fact or law in resolving each application.

I find that both of the Tenant's Applications pertain to the same residential property, name the same parties, the remedies sought by the Tenant relate to monetary compensation, the arbitrator will have to consider the same facts while resolving each Application, and both parties attended and consented to the Applications being heard together. As such, the Tenant's Applications were joined and are being considered together in this decision.

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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 51 of the *Act*?
2. Is the Tenant entitled to the return of their security deposit, pursuant to Section 38 and 67 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2020. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,900.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 and a pet deposit in the amount of \$1,000.00 to the Landlord. The tenancy ended on December 31, 2021. The Landlord confirmed having received the Tenant's forwarding address on January 15, 2022.

The Tenant is seeking monetary compensation in the amount of \$1,900.00. The parties agreed that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of the Property, which had an effective vacancy date of January 31, 2022. The parties agreed that the Tenant provide his notice to end tenancy to the Landlord on December 20, 2021 to vacate the rental unit on December 31, 2021.

The parties agreed that the Tenant paid the full amount of rent for December 2021. The parties agreed that the Landlord did not compensate the Tenant equivalent to one month of rent relating to the Two Month Notice. The Landlord agreed to compensate the Tenant, however, he was unsure at the time who to compensate as there were two tenants who occupied the rental unit, before the other tenant moved out on November 20, 2021.

The Tenant is also seeking the return of the security deposit. The Landlord stated that he is currently holding \$1,000.00 of the Tenant's security deposit. The Landlord stated that he returned \$500.00 of the remaining \$1,000.00 to each of the two tenants. The Tenant confirmed having received his \$500.00 on January 25, 2022, but could not confirm that the other tenant received their portion. The Landlord referred to a screen shot of two bank transactions showing \$500.00 was sent to both tenants on January 20, and 25, 2022.

The Tenant stated that the Landlord is not permitted to retain the remaining \$1,000.00 deposit as no condition inspection was completed between the parties. The Tenant stated that he did not consent to the Landlord retaining any portion of his deposit. The Landlord stated that he felt entitled to retaining the \$1,000.00 deposit as he found that the tenants had damaged the carpet in the rental unit. The Landlord confirmed that the tenants had not consented to him keeping this amount, nor has the Landlord applied to retaining the \$1,000.00 deposit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] the tenant may end the tenancy early by;

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Section 51(1) of the Act states;

A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, the parties agreed that the rent in the amount of \$1,900.00 was due to the Landlord on the first day of each month. I accept that the Landlord served the Tenants a Two Month Notice with an effective vacancy date of January 31, 2022.

I accept that the Tenant provided the Landlord with their Notice to end tenancy on December 20, 2021 with an effective vacancy date of December 31, 2021. I accept that the Tenant paid rent in full for December 2021 and has not yet received compensation from the Landlord.

In light of the above I find that Tenant is entitled to compensation equivalent of one month's rent payable under the tenancy agreement, pursuant to Section 51 of the *Act*. As the parties agreed during the hearing that the Landlord had not yet compensated the Tenant, Pursuant to section 51 and 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$1,900.00** which represents the amount that is the equivalent of one month's rent payable under the tenancy agreement.

With respect to the Tenant's claim for the return of their security deposit, I accept that the tenancy ended on December 31, 2021 and that the Landlord received the Tenant's forwarding address on January 15, 2022.

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.

I find that the Landlord returned \$500.00 to each of the Tenants for a combined amount of \$1,000.00 returned to the Tenants within the 15 day time limit as set out in Section 38 of the Act.

With respect to the remaining \$1,000.00 deposit being held by the Landlord, there is no evidence before me that that the Landlord was entitled to retain this amount of 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 January 30, 2022 to repay ALL the deposits or make an application for dispute resolution. As previously mentioned, the Landlord only returned \$1,000.00 of the \$2,000.00 in deposits paid.

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 held by the Landlord (\$1,000.00 x 2 = **\$2,000.00**).

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 \$4,000.00.

Conclusion

The Landlord breached the Act by not compensating the Tenant in accordance with Section 51 of the Act. Also the Landlord failed to comply with Section 38 of the Act with respect to the return of the Tenant's deposit. The Tenant is granted a monetary order in the amount of \$4,000.00. 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: October 3, 2022