



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, OLC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 3, 2022 (the "Application"). The Tenant amended their Application on September 9, 2022. 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, the Landlord, and the Landlord's Agent M.P. 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. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Landlord stated that they served their evidence to the Tenant by email on July 19, 2022 and again on July 26, 2022. The Tenant stated that they did not receive the Landlord's evidence. The Landlord confirmed that they have not submitted any proof of service.

Preliminary Matters

Rule of Procedure 3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case, the Tenant stated that they did not receive the Landlord's documentary evidence. I find that the Landlord has provided insufficient evidence that they served the Tenant with a copy of their documentary evidence. As such, I find that the Landlord's evidence will not be considered in this decision. As the Landlord and their Agent were in attendance, I will accept their oral testimony only.

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 parties testified and agreed to the following: the tenancy began on November 15, 2020. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$2,450.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$2,400.00 which the Landlord continues to hold. The tenancy ended on June 30, 2022. The Landlord confirmed having received the Tenant's forwarding address on July 14, 2022.

The parties agreed that the Tenant paid a security deposit of \$2,400.00. Both parties acknowledged this was above the allowable amount. The Tenant stated that he has not consented to the Landlord retaining any portion of the Tenant's deposit.

The Landlord stated that they felt entitled to retaining the Tenant's deposit as the cost of repairing the damage in the rental unit at the end of the tenancy is more than the deposit currently being held by the Landlord. The Landlord confirmed that they have not yet submitted an application for compensation and to retain the Tenant's security deposit for damages.

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 19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

In this case, I accept that the parties agreed that the Tenant paid the Landlord \$2,400.00 for a security deposit. I find that this was greater than the equivalent of ½ months' rent at the start of the tenancy. As such, I award the Tenant **\$1,200.00** for the return of the over payment of deposit. I find that the Landlord only holds a \$1,200.00 security deposit from the Tenant.

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 30, 2022 and provided the Landlord with his forwarding address in writing, which the Landlord confirmed having received on July 14, 2022. 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 July 29, 2022 to repay the deposit or make an application for dispute resolution. 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 (\$1,200.00 x 2 = **\$2,400.00**)

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 \$3,700.00.

Conclusion

The Landlord breached Section 19 and 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$3,700.00. 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: November 21, 2022

Residential Tenancy Branch