



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter was initiated as a result of the Tenant's Application for Dispute Resolution by Direct Request made on February 14, 2022, pursuant to section 38.1 of the Residential Tenancy Act (the Act). However, in an Interim Decision dated May 3, 2022, the matter was adjourned to a participatory hearing.

The Tenant applies for the following relief, pursuant to the Act:

- a monetary order for the return of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant was represented at the hearing by AB, an agent. The Landlord attended the hearing on her own behalf. Both AB and the Landlord provided affirmed testimony.

On behalf of the Tenant, AB testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on May 6, 2022. The Landlord acknowledged receipt of these documents. In addition, the Landlord testified that documentary evidence in response to the application was served on the Tenant by regular mail on December 10, 2022. AB acknowledged receipt of these documents.

During the hearing, no issues were raised with respect to service or receipt of the above documents. The Landlord and AB were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Landlord and AB 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 and to which I was referred. 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 the return of a security deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord and AB agreed the tenancy began on September 15, 2014 and ended on December 31, 2021. They agreed the Tenant paid a security deposit of \$725.00. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Tenant, AB testified that the Landlord was provided with a forwarding address in writing by leaving a copy at the Landlord's door on December 21, 2021. The Landlord acknowledged receipt of the Tenant's forwarding address on that date.

The parties disagreed with respect to the completion of condition inspection reports at the beginning and end of the tenancy. The Landlord asserted that a move-in condition inspection was completed at the beginning of the tenancy when the Tenant's daughter and son-in-law walked through the rental unit with her. The Landlord acknowledged that a "legal form" was not completed. In reply, AB maintained that a move-in condition inspection report was not completed.

With respect to a move-out condition inspection, the parties acknowledged that despite email correspondence attempting to schedule a move-out condition inspection, the parties were unable to schedule a mutually acceptable time and eventually completed condition inspections independently.

On behalf of the Tenant, AB testified that the Landlord returned \$538.66 to the Tenant and retained \$186.34. The Landlord agreed and testified that \$186.34 was retained on account of unpaid utilities, time spent cleaning the rental unit, and a replacement smoke alarm.

Analysis

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

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep 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 do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory. The condition of the rental unit at the end of the tenancy or other amounts due are not relevant considerations when considering a tenant's request for the return of a security deposit.

In this case, I find the Tenant provided the Landlord with a forwarding address in writing on December 21, 2021, and that the Landlord received it on that date. As a result, pursuant to section 38(1) of the Act, the Landlord had until January 15, 2022 to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The parties agreed the Landlord returned \$538.66 to the Tenant but retained \$186.34 for the reasons described above.

I find the Landlord did not repay the full amount of the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution in accordance with section 38(1) of the Act.

I also find the Landlord did not meet her obligation to complete a move-in condition inspection report and to provide a copy to the Tenant in accordance with section 23 of the Act and Part 3 of the Residential Tenancy Regulation. As a result, pursuant to section 24(2) of the Act, I find the Landlord's right to claim against the security deposit was extinguished.

Considering the above, and pursuant to section 38(6) of the Act, I find the Tenant is entitled to receive double the amount of the security deposit.

Policy Guideline #17 provides examples to help calculate the amount due to the Tenant. In this case, I find that Example A, reproduced below, is most like the current circumstances:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

In accordance with Policy Guideline #17, I find the Tenant is entitled to a monetary award of \$911.34 for the return of the security deposit, which has been calculated as follows:

$$\mathbf{\$725.00 \times 2 = \$1,450.00}$$

$$\mathbf{\$1,450.00 - \$538.66 = \$911.34}$$

Having been successful, I find the Tenant is also entitled to recover the \$100.00 filing fee paid to make the application.

The Tenant is granted monetary order for \$1,011.34, which is comprised of \$911.34 for double the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,011.34. The order must be served on the Landlord. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: January 6, 2023

Residential Tenancy Branch