



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed April 28, 2022, wherein the Tenant sought return of the security deposit paid and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference hearing at 1:30 p.m. on January 23, 2023. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:51 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on May 30, 2022 by email. The Tenant had applied for and obtained an order for substituted service permitting him to do so. This Decision should be read in conjunction with that Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that documents served by email are deemed served three days later; accordingly, I find the Landlord was duly served as of June 2, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of their security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began December 3, 2021. Monthly rent was \$1,000.00 and the Tenant paid a \$500.00 security deposit.

The Tenant provided their forwarding address to the Landlord on March 17, 2022 by email. A copy of this email was provided in evidence before me. The Landlord acknowledged receipt of the email on March 25, 2021. The Tenant testified that the Landlord failed to return the deposit and failed to make an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address.

Analysis

The Tenant applies for return of the security deposit paid pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (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.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that they did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on March 20, 2022, three days after the email was sent to the Tenant. The Landlord confirmed receipt by email dated March 25, 2022. The Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit.

In the case before me, I find the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$1,100.00**, comprised of double the security deposit (2 x \$500.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double their security deposit and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$1,100.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

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: February 10, 2023

Residential Tenancy Branch