



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application's for Dispute Resolution, filed May 11, 2022, wherein the Tenant sought return of his security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on January 24, 2022. Only the Tenant called into the original 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 the first hearing, although I left the teleconference hearing connection open until 1:58 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.

The Tenant testified that he served the Landlord with his Application package by registered mail sent on July 9, 2022. The tracking number for that package is included on the unpublished cover page of this my Decision. Pursuant to section 90 of the *Act*, documents served by registered mail are deemed served five days later; as such I found the Landlord was duly served with Notice of the January 24, 2023 hearing by July 14, 2022.

At the January 24, 2023 hearing the Tenant testified that he provided his forwarding address in writing to the Landlord in person on July 1, 2021. The Tenant also testified that he sent an email to the Landlord the day before (June 30, 2021) confirming his address.

The Tenant was not able to confirm whether this document was in evidence before me at the January 24, 2023 hearing as he had recently lost his sight and was not able to review the evidence filed by the person assisting him. I adjourned the hearing to provide the Tenant with an opportunity to ensure that document was filed in evidence. I confirm the Tenant provided that document to the Residential Tenancy Branch Online Service Portal and I considered it in making my Decision.

The January 24, 2023 hearing was adjourned to February 24, 2023. Again only the Tenant called into the hearing. Branch records confirm the Landlord was provided notice of the adjourned hearing by regular mail sent on February 1, 2023. Although the hearing occupied 21 minutes, the Landlord again did not call into the hearing. I found the Landlord was duly served with Notice of the February 24, 2023 hearing and I proceeded in his absence. However, notably, the Tenant did not give any additional evidence at that time save and except to confirm he provided his forwarding address to the Landlord in person as he testified at the January 24, 2023 hearing.

Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee paid for his application?

Background and Evidence

The Tenant testified as follows. His tenancy began March 1, 2014. Monthly rent was \$2,150.00 and the Tenant paid a \$1,075.00 security deposit. The tenancy ended on July 28, 2021.

The Tenant testified that the Landlord did not perform a move in or move out condition inspection.

As noted, the Tenant testified that he provided his forwarding address to the Landlord by email on June 30, 2021, a copy of which was provided in evidence before me. The Tenant testified that at that time he printed off the email from June 30, 2021, as well as receipts for the furnace, fridge and stove. He provided these documents to the Landlord in person on July 1, 2021.

The Tenant testified that the Landlord did not return his security deposit, nor did he file an Application for Dispute Resolution for an Order permitting the Landlord to retain those funds. The Tenant confirmed he did not agree to the Landlord retaining any portion of his deposit.

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 he did not agree to the Landlord retaining any portion of his security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 1, 2021 when the Tenant personally handed it to the Landlord. I find the tenancy ended July 28, 2021.

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*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) 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. Here 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 **\$2,250.00**, comprised of double the security deposit (2 x \$1,175.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double their security deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$2,250.00**. 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: March 1, 2023

Residential Tenancy Branch