



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord CB and tenant TN with witness RB appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord acknowledged receiving the tenant's dispute notice and materials and based on his testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for the return of security or pet deposits?
1. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on February 9, 2021. Rent was \$1,800.00 per month. The landlord holds a security deposit of \$900.00 and a pet deposit of \$900.00. The tenancy ended on October 31, 2021.

The tenant testified that a move in condition inspection was completed with the tenant and landlord present. The tenant received a copy of the move in condition inspection report. The tenant further testified that the move out inspection was scheduled for October 25, 2021 and the landlord did not attend. He notified the tenants at the last minute that he was unavailable. The tenant was moving out of the city and was unable to remain to do the inspection on a different day. The tenant stated that he provided the landlord with his forwarding address on December 13, 2021. The tenant testified that he did not agree in writing to allow the landlord to keep all or part of the security and pet deposits.

The landlord did not dispute the tenant's evidence. He further testified that after missing the October 25, 2021 scheduled move out inspection, he did not offer the tenant another opportunity to attend a move out inspection. The landlord also stated that he did not file an application for dispute resolution in respect of the security and pet deposits within 15 days of receiving the tenant's forwarding address.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case the onus is on the tenant to establish his entitlement to the return of the security and pet deposits.

The tenant did not extinguish his right to claim the return of the security and pet deposits. The tenant participated in the move in condition inspection as required under section 23 of the Act. The tenant attended the scheduled move out condition inspection as required under section 35 of the Act.

I find that the landlord received the tenant's forwarding address on December 13, 2021. Section 38(1) of the Act requires the landlord to either return the security and pet deposits or file an application for dispute resolution to retain all or part of the deposits within 15 days of receiving the tenant's forwarding address. The landlord did neither.

Section 38(6) states that if the landlord does not comply with section 38(1), then the tenant is entitled to the return of double the amount of security and pet deposits.

I find that the tenant has established that he is entitled to the return of double the amount of security and pet deposits. The tenant's application is granted.

As the tenant was successful in his application, he is also entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenant is granted a monetary order in the amount of \$3,700.00 for the security and pet deposits and the filing fee. The monetary order must be served on the landlord. The monetary 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: May 09, 2023

Residential Tenancy Branch