



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, 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

Tenant PG appeared. The landlord did not appear. The tenant was 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 tenant was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The tenant was affirmed.

The tenant testified that she served two dispute packages on the landlord by registered mail. One package was mailed on December 2, 2022 and the other package was mailed on December 16, 2022. The tenant provided Canada Post receipts in evidence for both packages. The landlord is deemed served with both packages, one on December 7, 2022 and the other December 21, 2022 based on sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced December 1, 2021. Rent was \$1,700.00 per month due on the first of the month. The landlord took a security deposit of \$850.00 and still holds it in trust for the tenant. The tenancy ended October 31, 2022.

The tenant testified that she was not offered the opportunity to do a move in inspection or a move out inspection with the landlord. The tenant further testified that she provided her forwarding address to the landlord on RTB Form 47 by posting it to the landlord's door on December 13, 2022. The tenant provided RTB Form 47 in evidence as well as a picture of the notice taped to the door. The tenant testified that the landlord has not returned her security deposit to date. The tenant testified that she did not agree in writing to the landlord retaining all or part of the security deposit and she has not been served with an application for dispute resolution by the landlord.

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.

Section 38(1) of the Act states that the landlord must either return the security deposit to the tenant or file an application for dispute resolution within 15 days of receiving the tenant's forwarding address. The landlord did neither. Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act the tenant is entitled to the return of double the amount of the security deposit.

I find that the tenant has established that she is entitled to return of the security deposit and as the landlord failed to follow section 38(1) of the Act, she entitled to the return of double the amount of the security deposit.

The tenant's application is granted. As the tenant was successful in her application, she is also entitled to recover her \$100.00 filing fee for the application.

Conclusion

The tenant is granted a monetary order in the amount of \$1,800.00 for the security deposit 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 29, 2023

Residential Tenancy Branch