



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On January 13, 2023, the Tenant made an Application for a Dispute Resolution Proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 29-minute teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:29 AM. Only the Applicant dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, the Tenant provided a solemn affirmation.

She advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on March 21, 2023 (the registered mail tracking number is noted on the first page of this Decision). She testified that she sent this to the Landlord's address that was told to her by the Landlord. As well, she referenced a BC Hydro bill and a Land Title Search, that were submitted as documentary evidence, to support her claim that this was the Landlord's proper address for service. As well, she stated that the tracking history indicated that this package was delivered on March 22, 2023.

I find it important to note that records indicate that the Landlord contacted the Residential Tenancy Branch on February 3, 2023, and was provided with information regarding Review Consideration of a Decision. Clearly, if the Landlord contacted the Branch at this point, she was already aware that this file was in process. Furthermore, given that she inquired about Review Consideration prior to a Decision even being rendered, it is curious and bizarre why the Landlord would even be inquiring about this. Moreover, records also indicate that the Landlord submitted documentary evidence for consideration on this file on May 15, 2023.

Based on the Tenant's solemnly affirmed testimony and undisputed evidence, in conjunction with the above regarding the Landlord's questionable actions, I can reasonably conclude that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As I am satisfied that the Landlord was served this package, the Tenant's evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double her security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy commenced on April 30, 2022, and that the tenancy ended on October 1, 2022, when she gave up vacant possession of the rental unit due to a Mutual Agreement to End Tenancy. Rent was established at an amount of \$1,900.00 per month and was due on the 31st day of each month. A security deposit of \$950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As an aside, when reviewing the tenancy agreement, it appears as if the Landlord failed to note an address for service for herself on the bottom of page one of the agreement. The landlord is required to do so, and this may appear as if the Landlord was intentionally attempting to avoid service of documents. The Landlord is cautioned that this agreement must be completed in its entirety, and failing to do so could lead to an interpretation that the Landlord is engaging intentionally in a duplicitous manner.

The Tenant advised that she provided her forwarding address in writing to the Landlord by completing the *Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit* form, and sending it by registered mail on October 12, 2022 (the registered mail tracking number is noted on the first page of this Decision). She submitted a picture of the registered mail tracking receipt to corroborate service. As well, she testified that this package was returned to her as it was unclaimed by the Landlord. While she was not required to do so, she then sent this package back to the Landlord on April 1, 2023, by registered mail (the registered mail tracking number is also noted on the first page of this Decision). She stated that this package was picked up by the Landlord on April 4, 2023.

She testified that the Landlord never returned any of the security deposit, and never had any written authorization to keep any of it. As such, as per Section 38 of the *Act*, she is requesting double the security deposit be awarded.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the totality of the evidence before me, I am satisfied that the Tenant provided her forwarding address in writing to the Landlord on October 12, 2022, and that it was deemed received on October 17, 2022, despite the Landlord not claiming this package. As such, the Landlord was required to return the deposit in full or claim against it within 15 days of this date. As the Landlord did not do either, I am satisfied that the Landlord failed to comply with the *Act*, and the doubling provisions apply to the security deposit. Therefore, I grant the Tenant a monetary award in the amount of $\$950.00 \times 2 =$ **\$1,900.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$1,900.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,000.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,000.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 26, 2023

Residential Tenancy Branch