



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #210087467: MNSDS-DR, FFT

File #910090720: MNDL, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

The Landlord files his own application seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests; and
- return of the filing fee pursuant to s. 72.

G.E. appeared as the Tenant and was joined by his son, K.E.. A.G. appeared as the Landlord, who was assisted by his daughter-in-law, B.P..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advises having served his application and evidence on the Landlord, which was acknowledged received without objection. Based on this, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant’s application materials.

Preliminary Issue – Service of the Landlord’s Application Materials

B.P. advised that the Landlord’s application was sent to the Tenant via registered mail sent on November 21, 2022. The Tenant acknowledges receipt of a package in November 2022 but says that it did not contain the Notice of Dispute Resolution from the Landlord. The Tenant says that he first received the Landlord’s application on June 21, 2023.

Rule 3.1 of the Rules of Procedure requires an applicant to serve the Notice of Dispute Resolution on the respondent within three days of receiving it from the Residential Tenancy Branch.

I have conflicting evidence on when the Landlord’s Notice of Dispute Resolution was served. Review of the materials provided to the Residential Tenancy Branch by the Landlord shows a package was sent on November 21, 2022, though there is no evidence to support was that package contained.

I find that I am unable to make a finding on if the Landlord’s Notice of Dispute Resolution was served on the Tenant in November 2022. Given this, I find that it would be procedurally unfair to proceed on the Landlord’s application as receipt of June 21, 2023 is far too late for the Tenant to prepare and respond.

As such, I dismiss the Landlord’s monetary claim under s. 67 of the *Act* with leave to reapply. However, the Landlord’s filing fee is forfeit such that the claim under s. 72 of the *Act* is dismissed without leave to reapply.

As a respondent, the Landlord was required to ensure his evidence was received by the applicant Tenant at least seven days prior to the hearing. As the package of June 21, 2023 comprised all the Landlord’s application materials, I find that the Landlord’s evidence was served in accordance with the *Act*.

Issues to be Decided

- 1) Is the Tenant entitled to the return of his security deposit?
- 2) Is the Tenant entitled to the return of his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

1) Is the Tenant entitled to the return of his security deposit?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The parties confirm the following details:

- The Tenant vacated the rental unit on August 31, 2022.
- A security deposit of \$500.00 was paid by the Tenant.
- None of the security deposit has been returned by the Landlord to date.

The Tenant advises that his son conducted the move-out inspection on his behalf. S.E. testifies that he gave the Landlord his address as the Tenant's forwarding address on September 2, 2022 and that the Landlord jotted it down in his notebook. S.E. further testifies that the Landlord sent mail to his address to forward to the Tenant, which he says confirms the Landlord had his address.

The Landlord denied receiving the Tenant's forwarding address on September 2, 2022. B.P. says that there was no move-out inspection and that the Tenant did not participate. I enquired whether the Landlord provided opportunities to the Tenant to participate. B.P. says the Landlord did not.

The Tenant argued that the move-out inspection took place on September 2, 2022 when his son attended the rental unit.

Dealing first with when the forwarding address was provided, I accept that it was provided on September 2, 2022. The Landlord provides a bare denial, this despite the

fact that a letter appears to have been sent to the Tenant via the son's address. I find that this is the date upon which the Landlord had to file or return the deposit.

B.P. raised the issue of the move-out condition inspection, specifically that the Tenant did not participate.

Section 35 of the *Act* establishes the move-out inspection process. Specifically, s. 35(3) of the *Act* sets a clear obligation for landlords to complete the condition inspection report and s. 35(2) requires a landlord provide at least two opportunities for the tenant to participate. Under s. 36(1) of the *Act*, a tenant's right to the security deposit is extinguished if they do not participate in the inspection after having been given two opportunities to do so by the landlord.

In this instance, the Landlord failed to provide the Tenant at least two opportunities to participate in the move-out inspection in contravention of his obligation to do so under s. 35(2) of the *Act*. Regardless of whether the meeting of September 2, 2022 can be considered the move-out inspection, the Landlord failed to demonstrate that two opportunities were given to the Tenant. Accordingly, I find that the Tenant's right to the security deposit has not been extinguished under s. 36(1) of the *Act*.

As the Tenant's right to the security deposit has not been extinguished and as the forwarding address was provided on September 2, 2022, I find that the Tenant is entitled to double his deposit under s. 38(6) of the *Act*, which in this case is \$1,000.00.

I note that the Landlord filed his monetary claim on November 3, 2022, such that the dismissal had no bearing on this outcome.

2) *Is the Tenant entitled to the return of his filing fee?*

As the Tenant was successful, I find that he is entitled to his filing fee. Pursuant to s. 72 of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee.

Conclusion

I grant the Tenant double his security deposit under to s. 38(6) of the *Act*.

I grant the Tenant his filing fee under s. 72(1) of the *Act*.

Combined, I order that the Landlord pay **\$1,100.00** to the Tenant (\$1,000.00 + \$100.00).

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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: June 29, 2023

Residential Tenancy Branch