



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on March 5, 2024 concerning an application made by the tenant seeking a monetary order as against the landlord for return of all or part of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application. The application was made by way of the Direct Request process, which was adjourned to this participatory hearing, and an Interim Decision was provided to the tenant, which required the tenant to serve the landlord with a copy of the Interim Decision and a Notice of Reconvened Hearing, all evidence and other required documents within 3 days of receiving the Interim Decision.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with all required documentation and evidence by registered mail on November 23, 2023 and has provided a Proof of Service document as well as a Canada Post cash register receipt bearing that date. The tenant submitted that the landlord was also served with the documents on November 23, 2023 by email at an email address contained in the tenancy agreement as an address for service of the landlord.

I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*. All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 2023 and ended on September 30, 2023. Rent in the amount of \$850.00 was payable on the 1st day of each month. On September 5, 2023 the tenant paid a security deposit to the landlord in the amount of \$150.00, which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing.

The landlord and the tenant shared kitchen and bathroom facilities, but the landlord is not the owner. The tenancy ended because on the day the tenancy agreement was signed the landlord advised that the landlord was having problems with the property manager who didn't want another person living there, and the landlord was going to move out, so the tenant had to as well.

On October 10, 2023 the tenant sent a request to the landlord by email seeking to recover the \$150.00 security deposit. The landlord said she would give the security deposit back in December, 2023 but the tenant has not heard from the landlord.

The landlord has not returned any portion of the security deposit and has not served the tenant with an application claiming against the security deposit. The tenant has also provided a Direct Request Worksheet indicating that the tenant did not authorize any deductions from the security deposit, and affirmed that to be the truth.

Analysis

The *Residential Tenancy Act* does not apply to cases where the tenant shares kitchen and bathroom facilities with the owner. In this case, I find that the landlord is not the owner, given the testimony that the landlord says she was going to move out after having problems with the property manager. Therefore, I accept jurisdiction with respect to this dispute.

The *Residential Tenancy Act* specifies that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit to the tenant in full or make an Application for Dispute Resolution claiming against the security deposit. If the landlord fails to do either within that 15 day period, the landlord must repay double the amount to the tenant.

I have reviewed the tenancy agreement, which clearly indicates that both parties agreed to service of documents by email. I also accept the undisputed testimony of the tenant

that the tenancy ended on September 30, 2023 and the landlord was provided with the tenant's forwarding address in writing on October 10, 2023 by email. Documents served by email are deemed to have been served 3 days later. The landlord has not returned any portion of the security deposit to the tenant and has not served the tenant with an application claiming against it. Therefore, I find that the landlord must repay the tenant double the amount, or \$300.00.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$400.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$400.00.

This order is final and binding and may be enforced.

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 05, 2024

Residential Tenancy Branch