



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 6, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order compelling the Landlord to return all or part of the security deposit or pet damage deposit; and
- an order granting the Tenant recovery of the filing fee.

The Tenant and the Landlord each attended the hearing on their own behalf. Both provided their solemn affirmation at the outset of the hearing.

The Tenant testified his Application package, including the Notice of a Dispute Resolution Hearing, was served on the Landlord by regular mail on June 6, 2016. The Tenant also testified that the documentary evidence upon which he intended to rely was served on the Landlord by regular mail on October 27, 2016. The Landlord acknowledged receipt of both during the hearing.

The Landlord testified that he served the Tenant with the documentary evidence upon which he intended to rely by regular mail on November 16, 2016. The Tenant confirmed receipt. No further issues were raised with respect to service or receipt of the parties' documents.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began or about June 24, 2015, and ended on April 30, 2016. At the end of the tenancy, rent was due in the amount of \$1,150.00 per month. At the beginning of the tenancy, the Tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00.

The Tenant provided oral testimony in support of the Application. He sought a monetary order granting double the amount of the security and pet damage deposits, or \$2,300.00, pursuant to section 38 of the *Act*. The Tenant provided testimony that the tenancy ended on April 30, 2016, and that he provided the Landlord with his forwarding address in writing on that date. A Condition Inspection Report, signed by the parties and dated April 30, 2016, was provided with the Landlord's documentary evidence. The Condition Inspection Report includes the Tenant's forwarding address.

The Tenant also testified that the Landlord attempted to return the pet damage deposit of \$575.00 by cheque dated May 28, 2016, but that the cheque has not been cashed.

The Landlord agreed he retained the security deposit because of the condition of the rental unit at the end of the tenancy. Documentary evidence submitted by the Landlord suggests the cost of repairs was \$2,695.00.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

In this case, I find that the Landlord received the Tenant's forwarding address in writing on April 30, 2016. Pursuant to section 38(1) of the *Act*, the Landlord had until May 15, 2016, to return the security and pet damages deposits or file an application for dispute resolution. However, the Landlord did not return the security and pet damage deposits by that date, and has not filed an application for dispute resolution.

Section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to a monetary award of \$2,300.00, which is double the amount of the security and pet damage deposits. The Tenant is directed not to cash the cheque dated May 28, 2016.

Having been successful, I also grant the Tenant recovery of the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the tenant a monetary order in the amount of \$2,400.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$2,400.00. This 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: November 29, 2016

Residential Tenancy Branch