



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call as a result of being notified of a re-scheduled conference call hearing. Both parties confirmed that they received the notice of a dispute resolution hearing letter from the Residential Tenancy Branch. As both parties have attended and have confirmed receipt of the notice of hearing, I am satisfied that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit, compensation under section 38 for failing to comply with the Act and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties provided affirmed testimony and agreed that this tenancy began on July 1, 2015 on a 6 month fixed term tenancy. Both parties agreed that the monthly rent was

\$1,050.00 payable on the 1st day of each month. Both parties agreed that a security deposit of \$525.00 was paid by the tenant at the start of the tenancy.

Both parties agreed that the tenancy ended on January 31, 2017. Both parties agreed that the tenant provided the landlord 10 Day Notice to End Tenancy as a result of receiving a 2 Month Notice.

The tenant provided affirmed testimony that she provided her forwarding address in writing to the landlord on January 21, 2016 as part of her 10 Day Notice for Ending the Tenancy early. The landlord disputed this claim stating that no forwarding address in writing was received. The tenant argued that the landlord had returned the undisputed amount of \$472.11 in a cheque to the tenant at her forwarding address. The landlord provided no further comment on this issue.

The tenant seeks a monetary claim of \$1,050.00 which consists of:

\$52.89	Return of Remaining portion of Security Deposit held by Landlord
\$525.00	Compensation, Failing to Comply with Section 38 of the Act
\$100.00	Recovery of Filing Fee

The tenant stated that at the end of tenancy the landlord failed to return \$52.89 as a result of a dispute over damages. Both parties confirmed that the landlord did not have permission from the tenant to retain the \$52.89, nor has the landlord filed an application for dispute against the security deposit for a claim of damages.

Analysis

I accept the affirmed testimony of both parties and find that I prefer the evidence of the tenant over that of the landlord regarding the forwarding address in writing. Although the landlord disputed receiving the tenant's forwarding address in writing, the tenant provided undisputed affirmed testimony that the landlord had sent a cheque to the tenant for \$472.11 to the tenant's forwarding address for the undisputed amount of the \$525.00 security deposit. As such, I find on a balance of probabilities that the landlord was provided with the tenant's forwarding address in writing on January 21, 2017.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I find that the tenancy ended on January 31, 2017 and that the tenant provided her forwarding address in writing to the landlord on January 21, 2017. I also accept the undisputed affirmed testimony of both parties that the landlord withheld \$52.89 from the tenant in dispute of a claim for damages. I also accept the landlord's undisputed affirmed testimony that he did not file an application for dispute for returning the security deposit. As such, I find that the landlord has forfeited his claim against the security deposit and must return the \$52.89 amount to the tenant.

I also find that the landlord failed to comply with section 38 (1) of the Act by returning the entire \$525.00 security deposit to the tenant within the allowed 15 day period which was February 15, 2017. As such, the landlord is liable for an amount equal to the \$525.00 security deposit pursuant to section 38 (6) of the Act.

The tenant has established a total monetary claim of \$577.89.

The tenant having been successful in her application is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$677.89.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: June 15, 2017

Residential Tenancy Branch