



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 07, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on July 10, 2017 were sent to the Landlord, via registered mail, at the service address noted on the Application. The submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit and/or a rent refund?

Background and Evidence:

The Tenant stated that:

- the Tenant agreed to pay rent of \$1,200.00 by the first day of each month;
- a security deposit of \$600.00 was paid;
- the rental unit was vacated on October 20, 2016;
- the tenancy ended because the Tenant gave the Landlord notice of his intent to vacate the rental unit, effective October 15, 2016;

- the Tenant provided his notice to end the tenancy sometime during the first week of October of 2016;
- rent was paid for October of 2016;
- the Tenant provided a forwarding address, in writing, on November 17, 2016, via registered mail;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant is seeking a rent refund of \$348.38 because he vacated the rental unit early. He stated that he vacated the unit early at the request of the Landlord, who informed him that he had rented the unit to another party. He stated that the Landlord did not tell him he would refund any portion of the rent.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

Section 45(1) of the *Act* allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the rent for this rental unit was due on the 1st day of the month, the Tenant did not have the right to end the tenancy on October 15, 2016. Rather, the tenancy needed to end either on September 30, 2016 or October 31, 2016. To end this tenancy on October 31, 2016 the Tenant would have had to give notice to end the tenancy on, or before, September 30, 2016.

As the Tenant did not have the right to end the tenancy on October 15, 2016 and the tenancy was not ended prior to October 01, 2016, I find that the Tenant was obligated to pay rent for October, in the amount of \$1,200.00. I find that the Tenant is not entitled to a rent refund from October, even though he vacated the rental unit prior to the end of October. I therefore dismiss the claim for a rent refund, without leave to reapply.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,300.00, which includes double the security deposit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: December 19, 2017

Residential Tenancy Branch