



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for double the return of their security deposit under the *Act*, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed that they were served with the tenant's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The landlord confirmed that they did not serve any documentary evidence in response to the tenant's application. The landlord stated that he was not sure how to serve evidence and as a result, the landlord was reminded that the Notice of Dispute Resolution Hearing ("Notice of Hearing") states:

"General Information

- It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules"

[Reproduced as written]

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed-term tenancy began on October 1, 2017 and was for a period of one year. The parties agreed that the tenancy ended on January 29, 2018 by way of a signed Mutual Agreement to End Tenancy ("mutual agreement"). A copy of the mutual agreement was submitted in evidence. The parties agreed that the tenant paid a \$500.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The tenant testified that she provided the landlord with her written forwarding address on January 29, 2018, which was the same date the keys were returned. The tenant stated that the written forwarding address was on a piece of paper. The landlord testified that he could not recall if the tenant provided her written forwarding address.

The tenant stated that when she provided her written forwarding address to the landlord he said to her "What do I need this for?" to which she replied that the *Act* requires that I give this to you for the return of my deposit. The landlord was asked if he had said "What do I need this for?" to the tenant, and the landlord confirmed that he did say that to the tenant on January 29, 2018. The landlord was then asked why he would have said that to which the landlord replied that he could have received the tenant's forwarding address.

The landlord confirmed that he has not returned the tenant's security deposit, has not filed an application to claim against the tenant's security deposit and did not have written permission to keep any portion of the tenant's security deposit.

The tenant is seeking double the return of her security deposit plus the recovery of the cost of the filing fee under the *Act*.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit – I have carefully considered the testimony before me. The tenant testified that she provided the landlord with her written forwarding address on January 29, 2018, which was the same date the keys were returned. The tenant testified that the written forwarding address was on a piece of paper. Although the landlord testified that he could not recall if the tenant provided her written forwarding address I find that by the landlord confirming that he said “What do I need this for?” that on the balance of probabilities that it is more likely than not that the landlord did receive the tenant's written forwarding address and that the landlord did not know the requirements of section 38 of the *Act*.

Based on the above, I find that the landlord had the tenant's written forwarding address as of January 29, 2018. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full security deposit to the tenant within 15 days of January 29, 2018 in accordance with the *Act*. The landlord continues to hold the security deposit. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

The landlord confirmed that he has not returned the tenant's security deposit, has not filed an application to claim against the tenant's security deposit and did not have written permission to keep any portion of the tenant's security deposit. The *Act* does not provide an exception for a landlord that either has not read the *Act* or has done their due diligence in terms of returning the tenant's security deposit or claiming against it. Therefore, I find that the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenant within 15 days of January 29, 2018 having not made a claim towards the security deposit, and by not having the written permission of the tenant to retain any portion of the security deposit.

Given the above, I find the tenant is entitled to the return of double the original security deposit of \$500.00 for a total of **\$1,000.00**. As the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**. Therefore, I find the tenant has established a total monetary claim of **\$1,100.00**.

I grant the tenant a monetary award pursuant to section 67 of the *Act* in the amount of **\$1,100.00**.

I caution the landlord to comply with section 38 of the *Act* in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim in the amount of \$1,100.00 as described above. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,100.00. Should the tenant require enforcement of the monetary order, the tenant must first serve the landlord with the monetary order and then the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is cautioned to comply with section 38 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 24, 2018

Residential Tenancy Branch