



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA ROYAL VACATIONS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD/FFT

Introduction and Preliminary Matters

On June 14, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Tenant attended the conference call hearing; however, the Landlord did not attend at any time during the 24-minute hearing. The Tenant testified that she served the Landlord with the Notice of Hearing by sending it via registered mail on June 20, 2018. The Tenant provided the tracking number for the package and stated that the Canada Post website indicated that the Landlord signed for the package on July 4, 2018. I find that the Landlord has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the evidence as presented by the Tenant.

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

Should the Tenant receive a Monetary Order for the return of double her security deposit, pursuant to Section 38 of the Act?

Should the Tenant be compensated for the cost of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Tenant provided the following undisputed testimony:

Her fixed term tenancy began on Sept 6, 2016 and ended on July 5, 2017. The rent was \$1,740.00 plus \$105.00 for monthly cleaning. She paid \$870.00 as a security deposit on July 10, 2016.

The Tenant testified that her parents participated in a move-in inspection with the Landlord on September 6, 2016, and received a copy of the Condition Inspection report. The Tenant moved out of the rental unit on July 3, 2017, and participated in the move-out inspection with the Landlord; however, did not receive a copy of the report.

The Tenant stated that she did not consent for the Landlord to keep any portion of the security deposit and that the Landlord indicated that they would return the security deposit to the Tenant.

When the Tenant did not receive her security deposit from the Landlord, she applied for Dispute Resolution on August 28, 2017. During the subsequent hearing (see related File number on the cover page of this Decision) on February 28, 2018, the Tenant testified that she sent the Notice of Hearing package to the Landlord, via registered mail, on August 29, 2017 and that it was successfully delivered to and signed by the Landlord on September 5, 2017. The Arbitrator found that the "Landlord was duly served with notification of this proceeding...". The Tenant stated that her new address was included in the Notice of Hearing.

During the February 28, 2018, hearing, the Tenant could not recall with any certainty whether she had provided the Landlord with a forwarding address in writing prior to her Application for Dispute Resolution; therefore, the Arbitrator dismissed the Tenant's claim as premature. However, the Arbitrator did note that the Landlord would have received the Tenant's forwarding address on the Application for Dispute Resolution (Notice of Hearing), which would have been on September 5, 2017. Furthermore, the Arbitrator ensured that the Landlord was notified a second time of the Tenant's

forwarding address when the Arbitrator sent a copy of her Decision, dated February 28, 2018, to the Landlord.

When the Landlord had not returned the Tenant's security deposit by June 14, 2018, the Tenant again applied for Dispute Resolution and testified, as noted above, that she served the Landlord the Notice of Hearing package and the Landlord signed for it on July 4, 2018. The Notice of Hearing package included the Tenant's new address.

The Tenant stated that on July 20, 2018, she received a letter from the Landlord, date stamped July 5, 2018. The letter stated that the Landlord had deducted most of the Tenant's security deposit for damage to the rental unit and the balance was \$156.05, which the Landlord provided in a cheque.

The Tenant is claiming for double her security deposit, less \$156.05, for a total amount of \$1,583.95.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days, and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that she moved out of the rental unit on July 3, 2017 and provided her forwarding address to the Landlord on three occasions. Firstly, on September 5, 2017, when the Tenant send a Notice of Hearing to the Landlord claiming for her security deposit; secondly, when the Arbitrator sent the Landlord a copy of her Decision, dated February 28, 2018; and thirdly, when the Tenant forwarded the Landlord the Notice of Hearing for this hearing on July 4, 2018, in accordance with Sections 89 and 90 of the Act.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the

original security deposit, less the \$156.05 that they did return, for a total of \$1,583.95, pursuant to Section 38 of the Act.

I find that the Tenant's Application has merit and that she should be reimbursed for the cost of the filing fee, pursuant to Section 72 of the Act.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,683.95, which includes \$1,583.95 for the outstanding security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

I grant the Tenant a Monetary Order for the amount of \$1,683.95, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: September 14, 2018

Residential Tenancy Branch