



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 26, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of the 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 personally served the Landlord with the Notice of Hearing by hand delivering a copy to the Landlord’s place of business on June 28, 2018 and obtaining a signature from the receptionist (an agent of the Landlord). 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 affirmed testimony and 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.

Preliminary Matters

The Tenant confirmed that her Tenancy Agreement indicated that the Landlord, as stated on her Application for Dispute Resolution, was an agent of the management company responsible for the rental unit. In accordance with Section 64(3) of the Act, I have amended the Tenants’ Application by adding the management company as an agent of the Landlord and as a Respondent in this Application.

Issues to be Decided

Should the Tenants receive a Monetary Order for the balance of their security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenant provided the following undisputed testimony:

The 8-month, fixed term tenancy began on September 1, 2017. The Tenants paid \$1,900.00 a month in rent. The Landlord collected a \$950.00 security deposit. The Tenants moved out of the rental unit on April 21, 2018, in accordance with the Tenancy Agreement.

The Tenant stated that she provided a forwarding address to the Landlord on May 15, 2018, in the form of an email. She stated that a portion of the security deposit was returned to the Tenants sometime after May 20, 2018, in the amount of \$735.00.

The Tenant stated that the Landlord claimed \$215.00 for cleaning of the rental unit, although, the Tenant indicated that the rental unit was thoroughly cleaned. Regardless, the Tenants did not provide consent for the Landlord to keep a portion of their security deposit.

After the Tenant applied for Dispute Resolution and served the Landlord the Notice of Hearing documentation, the Landlord sent a cheque to the Tenant in the amount of \$215.00, dated July 26, 2018. The Tenant stated that she had not cashed the cheque from the Landlord as this hearing had been scheduled. The Tenant is requesting a Monetary Order for the return of her security deposit and the filing fee.

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 they requested their security deposit, notified the Landlord of their forwarding address on May 15, 2018 and received a partial return of the security deposit at the end of May 2018, in the amount of \$735.00.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenants 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 Tenants double the amount of the outstanding security deposit for a total of \$430.00, pursuant to Section 38 of the Act.

I find that the Tenants' Application has merit and that the Tenants should be compensated for the cost of the filing fee, in the amount of \$100.00, in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Tenants a Monetary Order for the amount of \$530.00, which includes double the outstanding security deposit in the amount of \$430.00 and \$100.00 in compensation for the fee paid to file this Application. 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: November 01, 2018

Residential Tenancy Branch