



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on January 21, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by T.A. and R.M., agents. The Tenant, T.A., and R.M. provided affirmed testimony.

The Tenant testified that the Landlord was served with the Application package in person. On behalf of the Landlord, T.A. acknowledged receipt on January 25, 2019. Further, on behalf of the Landlord, T.A. testified the Tenant was served with the Landlord's documentary evidence by registered mail. The Tenant acknowledged receipt. During the hearing, neither party raised any issue with respect to service or receipt of these documents. The parties were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. 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

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on June 1, 2016, and ended on September 30, 2018. Although uncertain about the amount of rent due at the end of the tenancy, the parties agreed the Tenant paid a security deposit of \$425.00.

During the hearing, the Tenant testified that a forwarding address was provided to the Landlord in writing on September 30, 2018. The Tenant testified the Landlord did not send the security deposit repayment cheque to the correct street address. As a result, the Tenant testified he did not receive the repayment until it was picked up at the Landlord's office October 24, 2018. The Tenant submits he is entitled to receive double the amount of the security deposit because the security deposit was received late.

In reply, R.M. acknowledged that a forwarding address was provided to the Landlord on September 30, 2018. Although incomplete, the Landlord was aware of the Tenant's full mailing address, as noted on a Security Deposit Statement dated-stamped October 11, 2018. The security deposit repayment cheque was sent to the Tenant on October 12, 2018. However, T.A. acknowledged that the cheque was sent to the wrong street address due to an administrative error and was returned to the Landlord. R.M. submitted that the Landlord should not be punished due to a mere administrative error.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Tenant provided his forwarding address to the Landlord on September 30, 2018. Further, I find that the Landlord was aware of the correct mailing address, as noted on the Security Deposit Statement date-stamped October 11, 2018. I also find that the security deposit repayment cheque was mailed to the Tenant on October 12, 2018. However, the cheque was sent to an incorrect address due to an administrative error and through no fault of the Tenant. Ultimately, the Landlord did not repay the security deposit to the Tenant within 15 days after receipt of the Tenant's forwarding address in accordance with section 38(1) of the *Act*.

After careful consideration of the evidence and submissions of the parties, I find there is no evidence of an intention by the Landlord to avoid repayment of the security deposit to the Tenant. However, through no fault of the Tenant, the security deposit was not repaid within 15 days after the Landlord received the Tenant's forwarding address in writing. As noted above, the language in section 38(6) of the *Act* is mandatory. In addition, I was referred to no provision of the *Act* that excuses a breach of section 38(1) of the *Act* due to an administrative error. To do so would provide an opening for unscrupulous landlords to avoid the application of this provision. Therefore, I find the Tenant is entitled to recover double the amount of the security deposit, pursuant to section 38(6) of the *Act*. Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to sections 38 and 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$525.00, which has been calculated as follows:

Claim	Amount
Security deposit (x2):	\$850.00
Filing fee:	\$100.00
<i>LESS</i> amount received by Tenant:	(\$425.00)
TOTAL:	\$525.00

Conclusion

The Tenant is granted a monetary order in the amount of \$525.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: March 28, 2019

Residential Tenancy Branch