



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on July 22, 2019, wherein the Tenant sought return of his security deposit and pet damage deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on November 4, 2019. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:47 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on July 27, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Tenant also provided a photo of the envelope indicating that the Landlord refused service of the registered mail package.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 31, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to return of his security deposit and paid damage deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began June 15, 2018. The Tenant stated that he paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00.

The tenancy ended on June 30, 2019. The Tenant testified that despite his repeated requests the Landlord refused to do a move out condition inspection.

On July 4, 2019 the Tenant posted a letter to the Landlord's door advising her of his forwarding address and asking that she return his security deposit. He stated that he tried to personally deliver it to her, but when she looked through the window and saw him she refused to come to the door. He the posted it to the door and waited long enough to see that she received the document as later it was removed.

The Tenant confirmed that he did not authorize the Landlord to retain any portion of his deposit. He further stated that the Landlord did not return his deposits, nor did she make an application for authority to retain them.

Analysis

The Tenant applied for return of his security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that he did not agree to the Landlord retaining any portion of his pet damage deposit or security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 4, 2019. Although documents posted to the door are deemed served three days later pursuant to section 90, I accept the Tenant's evidence that the Landlord was home when he posted the letter to the door and removed the letter from the door on that same date.

I accept the Tenant's testimony that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

I also accept the Tenant's testimony that the Landlord refused to conduct a move out inspection. By failing to perform an outgoing condition inspection report in accordance with the *Act*, the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to section 36(2) of the *Act*.

The security and pet damage deposit are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes that she is entitled to monetary compensation from the Tenant, the Landlord must either obtain the Tenant's consent to

such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security and pet damage deposit. Here the Landlord did not have any authority under the *Act*.

Having made the above findings, I Order, pursuant to sections 38, 67 and 72 of the *Act*, that the Landlord pay the Tenant the sum of **\$2,100.00**, comprised of double the security and pet damage deposit (2 x \$1,000.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double the security and pet damage deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$2,100.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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 04, 2019

Residential Tenancy Branch