



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of his security deposit; and
- recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The landlord confirmed receiving the tenant's evidence and that he did not file evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit from the landlord and to recovery of his filing fee?

Background and Evidence

There was no written tenancy agreement for this tenancy. The evidence shows that the rental unit is in the basement level of a home owned and occupied by the landlord on the upper level.

Tenant's evidence in support of his application –

The tenant said that he moved into the rental unit on January 1, 2019, which was occupied by another tenant (N) living there at the time. The tenant said that he shared the monthly rent of \$2,000 equally with N, and paid N \$500.00 as a security deposit. The tenant explained that he paid \$1,000 each month to N and that N paid the monthly rent of \$2,000 to the landlord.

According to the tenant, N vacated the rental unit in May 2020, which led the tenant to find another roommate to share the monthly rent. The tenant said that N returned his security deposit of \$500.

A new tenant moved into the rental unit, and the tenant assumed paying the landlord the monthly rent of \$2,000, which was split with the new tenant.

The tenant said that after N vacated, he paid the landlord \$1,000 as a security deposit, \$500 of which was his portion.

The tenant submitted that he vacated the rental unit on December 1, 2019, and provided his written forwarding address to the landlord on December 2, 2019, in a letter put in the landlord's mail slot in his front door.

The tenant submitted that despite providing his written forwarding address, the landlord has not returned any portion of his security deposit.

In response to my inquiry, the tenant said there was not a move-in or move-out inspection of the rental unit.

The tenant's monetary claim is \$500, the amount of his security deposit.

The tenant's relevant evidence included a copy of the letter containing the written forwarding address and a photograph of the letter in the landlord's mail slot in his front door.

Landlord's response-

In responses to my questions, the landlord confirmed that the tenant moved into the rental unit on January 1, 2019 and that he held a security deposit of \$500 from the tenant.

The landlord said that the tenant was supposed to vacate the rental unit before December 1, 2020, and that he might have even stayed until December 2, 2020.

The landlord confirmed receiving the tenant's written forwarding address as indicated by the tenant, on December 2, 2019.

The landlord said he did not return the tenant's security deposit as the tenant failed to clean up after the tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, unless the tenant's right to a return of their security deposit has been extinguished by failure to participate in a move-in or move-out inspection, a landlord must either return a tenant's security deposit or make an application for dispute resolution claiming against the security deposit **within 15 days** of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord may not make a claim against the security deposit and **must** pay the tenant double the security deposit, pursuant to section 38(6) of the Act. I do not find that the tenant has extinguished his rights to the return of his security deposit due to the parties' confirmation that a move-in or move-out inspection did not take place. (my emphasis)

In the case before me, the undisputed evidence shows that the tenancy ended at the latest on December 2, 2019, and that the landlord received the tenant's written forwarding address in a letter on December 2, 2019.

Due to the above, I find the landlord was obligated to return the tenant's security deposit, in full, or make an application for dispute resolution claiming against the deposit for alleged cleaning and/or damage by December 17, 2019. In contravention of the Act, the landlord retained the security deposit, without filing an application.

I therefore find the tenant is entitled to a return of his security deposit of \$500. I also find that the security deposit must be doubled.

Due to the above, I therefore find the tenant has established a total monetary claim of \$1,100, comprised of his security deposit of \$500, doubled to \$1,000, and the filing fee paid for this application of \$100, which I have awarded him due to his successful application.

I grant the tenant a monetary order in the amount of \$1,100 and it is included with this Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is granted as he is awarded a monetary order in the amount of \$1,100 as noted above.

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: June 1, 2020

Residential Tenancy Branch