



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 17, 2021 (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
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 9, 2022 as a teleconference hearing. Only the Tenant appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant had submitted, and was successful with their Application for Substituted Service, permitting the Tenant to serve the Landlord via email. The Tenant testified the Application and documentary evidence package was served on the Landlord by email on November 5, 2022. A copy of the email was submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 71 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on November 8, 2022, the third day after the email was sent. The Landlord did not submit any documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2020 and ended on July 31, 2021. During the tenancy, rent was due in the amount of \$1,680.00 per month. The Tenant testified that she paid a security deposit in the amount of \$840.00 which the Landlord continues to hold. The Tenant provided a receipt confirming the security deposit paid to the Landlord. The Tenant stated that the tenancy ended on July 31, 2021.

The Tenant testified that she sent the Landlord her forwarding address by email on July 30, 2021, requesting the return of her security deposit. The Tenant provided a copy of the email exchange between the Tenant and the Landlord which shows that the Landlord responded to the Tenant's email on August 17, 2021. The Tenant stated that she did not consent to the Landlord deducting any amount of the deposit, and that the Landlord has failed to return the Tenant's security deposit or make a claim to retain it. As such, the Tenant is seeking the return of double the amount of her deposit as well as the filing fee paid to make the Application.

The Landlord did not attend to respond to the Tenant's Application.

Analysis

Based on the uncontested documentary evidence before me for consideration 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 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 comply with section 38(1) of the *Act*, and does not have

authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenant vacated the rental unit on July 31, 2021 after having provided the Landlord with her forwarding address by email on July 30, 2021. While email service is not an approved method of service pursuant to Section 88 of the Act, I find that the Tenant provided sufficient evidence to demonstrate that the Landlord received the Tenant's email containing her forwarding address as late as August 17, 2021 which is the date of the Landlord's responding email. As such, pursuant to Section 71 of the Act, I find that the Landlord was sufficiently served with the Tenant's forwarding address on August 17, 2021.

As there is no evidence before me that the Landlord was entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until September 1, 2021 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$840.00 x 2 = **\$1,680.00**).

Having been successful, I also find the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary order in the amount of \$1,690.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$1,690.00. 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: May 09, 2022