



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of all or part of a security deposit; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and other required documents, including all evidence, by email on July 30, 2023. The tenant was granted a Substitutional Service order permitting service by email, and has provided a copy of the email with attachments. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act* and the Substitutional Service order.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for propane costs?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2021 and ended on February 1, 2023. Rent in the amount of \$2,500.00 was payable on the 1st day of each month and there are no rental arrears. On August 1, 2021 the tenant paid a security deposit to the landlord in the amount of \$1,250.00, which is still held by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the house has 3 units; the front lower unit is an Air BNB which was run by the tenant for the landlord on contract. The back unit is a suite with 1 bedroom, which the tenant took over in the winter of 2022 with a separate tenancy agreement, and the tenant used that unit for an employee. The upstairs unit was occupied by the tenant and the tenant's 2 kids. In April 2023 the employee moved out.

On December 1, 2022 the tenant gave notice to vacate the main living unit effective February 1, 2023, and on April 14, 2023 the tenant gave the landlord a forwarding address by email. A copy of the email has been provided as evidence for this hearing.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$1,713.83:

- \$463.83 for propane; and
- \$1,250.00 for the security deposit.

The parties had an agreement when the tenant started to manage the air BNB for the landlord. Services were in the tenant's name. The upper level and lower level shared propane, and the agreement was that one-third would be the landlord's costs. The landlord paid it in the past. The landlord was upset that the tenant moved out and withheld the security deposit and his portion of the propane. The tenant has paid the bills. A copy of the statement for the purchase and payment of propane has been provided for this hearing. Also provided is an invoice to the landlord by the tenant showing one-third of the outstanding amounts totaling \$463.83.

The landlord has not served the tenant with an Application for Dispute Resolution claiming the security deposit. The landlord is a realtor and gets paid on commission. The rental unit was re-rented, and the tenant helped the landlord find a tenant.

Analysis

The *Residential tenancy Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

I have reviewed the tenancy agreement and the Substitutional Service order, both of which indicate that the landlord did not provide the tenant with an address for service of the landlord. I have also reviewed the text messages from the landlord agreeing to return the security deposit. I am satisfied that the landlord has received the tenants' forwarding address in writing and given the landlord's failure to provide an address for service, I find that the tenant has notified the landlord in the only method available to the tenant.

The landlord has not returned the security deposit to the tenant within the 15 day period and has not applied for dispute resolution to keep it. Therefore, I find that the landlord must repay double the amount of the security deposit to the tenant, or \$2,500.00.

I also accept the undisputed testimony of the tenant that the landlord kept his agreement to pay one-third of the propane costs, but failed to do so toward the end of the tenancy, and I find that the tenant has established a claim of \$463.83.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$3,063.83. The landlord must be served with the order which may be enforced in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,063.83.

This order is final and binding and may be enforced.

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: October 29, 2023

Residential Tenancy Branch