

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND MNSD FF

Introduction

This matter dealt with an application by the landlord for a monetary order and to retain all or part of the security deposit for damages to the property.

Both parties appeared at the hearing and were afforded a full opportunity to present evidence. I also advised both parties that I would consider their oral testimony as well as their written documentation that had been received prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to retain all or part of the security deposit for damage to the rental unit, and if so, in what amount?

Background and Evidence

The facts of this tenancy are as follows:

- the tenancy commenced on February 1, 1991 and a security deposit of \$240.00 was paid
- the tenancy ended on August 31, 2008 when the tenant vacated the rental unit
- no move out inspection was conducted of the rental unit
- the landlord has retained an amount of \$60.00 from the security deposit and returned the balance of \$180.00 to the tenant
- the landlord claims the \$60.00 for cleaning cost for the rental unit

The evidence of the landlord is that the rental unit required cleaning and as such he retained the amount of \$60.00 from the security deposit. The landlord did not offer the tenant the required two opportunities to carry out a move out inspection.

The tenant denies that the rental unit needed cleaning and states that he did not authorize the landlord to deduct the \$60.00 from the security deposit. The tenant also raises the issue that the landlord has failed to pay the required interest on the security deposit as required under the *Residential Tenancy Act*.

Analysis

I find that the landlord's failure to provide the required two opportunities has extinguished the landlord's right to make a claim against the security deposit. The landlord does have the right to file for a monetary order for damages but I find that in examining the evidence provided that the landlord has failed to provide any details of the condition of the rental unit in relation to the claimed cleaning costs. I dismiss the landlord's claim as not being proven.

I quote from s. 38 of the *Residential Tenancy Act*:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

In examining the evidence I find that the landlord has breached s. 38 (1) above and as such the tenant is entitled to a return of an amount equal to double the security deposit pursuant to s. 38(6).

I calculate the tenant's entitlement as follows:

Security Deposit	\$240.00
Interest on Security Deposit	\$ 93.93
Amount Equal To Security Deposit	\$240.00
Total	\$573.93
Minus \$180.00 Paid to Tenant	\$180.00
Total Payable to Tenant	\$393.93

Conclusion

I dismiss the landlord's application.

I order that the applicant landlord must pay to the respondent tenant the amount of \$393.93 and that the amount be paid forthwith. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: November 20, 2008