



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and recovery of the filing fee. Both parties were represented at the hearing. Both parties had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether the landlord had the legal right to retain the tenant's security deposit.
2. Whether the landlord is obligated to pay the tenant double the security deposit.
3. Damages the tenant agrees to pay.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I find the following relevant facts concerning the tenancy. The tenancy commenced on or about July 21, 2008 and the tenant had paid a \$337.50 security deposit at the commencement of the tenancy. The landlord and the tenant performed a walk-through of the rental unit at the commencement of the tenancy; however, the tenant was not presented with a move-in inspection report for his signature or his records. The tenant vacated the rental unit on October 31, 2008. The tenant provided his forwarding address to the landlord in writing on October 31, 2008. The landlord and the tenant performed a move-out inspection and the tenant signed an inspection report; however, additional notes and amounts were added to the report after the tenant signed it. The tenant was provided with a copy

of the inspection report approximately three weeks after the tenancy ended and the report indicated that none of the security deposit would be returned due to the landlord's calculation of damages caused by the tenant.

The tenant testified that he did not authorize the landlord to retain any part of his security deposit in writing; however, during the hearing the tenant stated that he was willing to compensate the landlord \$33.88 for a broken blind and \$30.00 for additional cleaning required.

The landlord did not dispute most of the tenant's testimony. Rather, the landlord was of the position that they are relatively new at being a landlord and they are not aware of all of the requirements of the Act. The landlord felt entitled to deduct damages from the security deposit and had submitted invoices to substantiate that the amounts deducted were reasonable.

Analysis

As the parties were informed during the hearing, the landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to retaining the security deposit. The landlord is at liberty to make a separate application for damages; however, as the tenant did consent to a deductions for a broken blind and cleaning of the fridge, I have taken in to account those deductions in making this decision.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages; however, the landlord loses the right to obtain the tenant's consent if the landlord fails to meet the move-in and move-out inspection report requirements. In this case, the landlord did not

meet the move-in inspection report requirements as the tenant was not provided the opportunity to sign the move-in inspection report and the report was not provided to the tenant within seven days. Therefore, the landlord could not have legally obtained the tenant's consent to made deductions for damages and the landlord was required to comply with section 38(1) of the Act. Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

I find that the tenancy ended and the tenant provided his forwarding address in writing on October 31, 2008 meaning the landlord had until November 15, 2008 to either repay the security deposit to the tenant or make an application for dispute resolution. Since the landlord did neither of these two options by November 15, 2008 the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

In light of the above, the landlord did not have the legal right to retain the tenant's security deposit and the tenant has established an entitlement to return of double his security deposit. The tenant is awarded the filing fee paid for making this application. Taking into account the tenant's consent to deduct \$33.88 for the broken blind and \$30.00 for additional cleaning, I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit ($\$337.50 \times 2$)	\$ 675.00
Interest to today's date	2.27
Filing fee	50.00
Less: broken blind and additional cleaning	<u>(63.88)</u>
Monetary Order for tenant	<u>\$ 663.39</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

As information for the landlord, I have enclosed a copy of *A Guide for Landlords and Tenants in British Columbia*. The Guide provides information with respect to handling security deposits among other rights and obligations under the Act. Additional information may also be found from the Residential Tenancy Office website at www.rto.gov.bc.ca

Conclusion

The tenant was successful in his application and is awarded a Monetary Order in the total amount of \$663.39.

January 27, 2009

Date of Decision

Dispute Resolution Officer