



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant for a monetary order for the return of double her security deposit and to recover the filing fee for this proceeding as well as the cost of photographs.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This month to month tenancy started on October 1, 2007 and ended on September 30, 2008. Rent was \$1,055.00 per month payable on the first day of each month. The Tenant paid a security deposit of \$500.00 on October 1, 2007. The Parties entered a new written tenancy agreement on May 1, 2008 when a new co-tenant moved into the rental unit. The Tenant said she (and her partner) and her co-tenant (and her partner) used the rental unit primarily as a secondary residence (during periods of respite when someone was looking after their respective disabled children) and she also spent approximately 2 days per month there conducting a home-based business.

Clause 20 of the tenancy agreement provides that at the end of the tenancy, the Landlord will return the security deposit to the Tenant at her primary residential address which is set out. The Tenant said although she did not give her written authorization to the Landlord to keep her security deposit, he returned only \$22.50 of it to her at the end of the tenancy. The Tenant agreed that she would be responsible for carpet cleaning expenses in the amount of \$80.00.

The Landlord claimed that pursuant to the Parties' tenancy agreement (clause 20), he had 30 days to return the Tenant's security deposit to her. The Landlord also argued that the Tenant was responsible for a number of expenses he incurred in the total amount of \$485.00 (which he set out on a list). The Landlord said paragraph 1 of the

Parties tenancy agreement authorized him to deduct strata fines from the security deposit. The Landlord also said that clause 48 of the tenancy agreement authorized him to deduct the cost of carpet cleaning from the security deposit. The Landlord sent the Tenant a list of deductions from the security deposit together with the balance 2 days after she returned her keys on October 10, 2008.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date he receives the Tenant's forwarding address in writing to either return the security deposit to the Tenant or to apply for dispute resolution to make a claim against it. If a Landlord fails to do either of these things and does not have the Tenant's written authorization to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord is liable to return double the amount of the security deposit to the Tenant. Section 5(3)(1)(a) of the Act says that a term of a tenancy agreement is unenforceable if it conflicts with the Act.

I note that clause 20 of the parties' tenancy agreement says "within the **lesser** of 30 days and any time period required by the Act after the termination of the tenancy, the Landlord will deliver or mail the security deposit less any proper deductions or with further demand for payment to (the tenant)." Consequently this clause acknowledges that the Landlord must comply with the timelines under the Act for returning the security deposit if the Act requires it to be returned in fewer than 30 days. If this clause did purport to allow the Landlord to return the deposit in 30 days, it would conflict with s. 38(1) of the Act and be unenforceable.

The Landlord argued that the Tenant's written authorization to pay strata fines is contained in Clause 1 of the tenancy agreement. Clause 1 says in part "the Tenant is responsible for all permits and licenses relating to this home-based business and the Tenant indemnifies the Landlord of all liability, costs and fees associated with this business." Nowhere in this clause does it say indemnification will be made by deducting an amount of a liability from the security deposit. In contrast, Clause 17 of the tenancy agreement lists items for which the Landlord "may charge the Tenant or make deductions from the security deposit." The list of items does not include strata fines.

Section 5(3)(c) of the Act says that a term of a tenancy agreement is not enforceable if it is not expressed in a manner that clearly communicates the rights and obligations under it. I find that clause 1 of the tenancy agreement does not clearly authorize the Landlord to deduct strata fines from the security deposit. Furthermore, the Landlord provided a copy of a Notice of By-Law Violation dated October 6, 2008 which indicated that the Landlord had 14 days to dispute the violation complaint giving rise to the Notice after which a fine could be imposed. The Landlord claimed that he did not intend to dispute the Notice and confirmed with the Strata that he would be fined. The Landlord did not

provide any documentary evidence that he had, in fact, been fined as of October 15, 2008 (when he was required to return the security deposit) or at all.

I also find that while clause 17 sets out a Tenant's responsibilities for certain things, it is not a blank cheque for the Landlord to deduct whatever he unilaterally decides is appropriate; an enforceable written authorization (or consent) requires that the Tenant know what amount is going to be deducted from the security deposit. Consequently, I find that the tenancy agreement does not amount to the written authorization by the Tenant for the Landlord to deduct the amount of \$485.00 from the security deposit.

I find that the Tenant gave her forwarding address in writing to the Landlord on May 1, 2008 and that the tenancy ended on September 30, 2008. Consequently, the Landlord had until October 15, 2008 to return the security deposit to the Tenant. I find the Landlord has returned \$22.50 of the security deposit to the Tenant since the end of the tenancy. Consequently, the Landlord is liable to return double the outstanding balance of the security deposit plus accrued interest to the Tenant (less the cost of carpet cleaning). As the Tenant has been successful in this matter, she is also entitled to recover her filing fee of \$50.00 for this proceeding. The Tenant's application to recover the costs of photographs is dismissed as they were not relevant to the issues in this matter and therefore not necessary. The Tenant will be entitled to a monetary order as follows:

Double security deposit withheld:	\$970.00
Accrued interest (on \$500.00):	\$8.81
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,028.81
Less payment made:	<u>(\$22.50)</u>
TOTAL OWING:	\$1,006.31

Conclusion

A Monetary Order in the amount of **\$1,006.31** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.