



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant for return of the security deposit. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This 6 month fixed term tenancy began August 1, 2010 with monthly rent of \$3500.00 and the tenant paid a rental deposit of \$1750.00 and a damage deposit of \$1750.00. The landlord and tenant signed an agreement to mutually end the tenancy on December 31, 2010.

The tenant testified that they notified the landlord in writing of their forwarding address on February 1, 2011 but that the landlord has not returned the deposits the tenant paid to the landlord. The landlord responded to this request with a demand letter stating that there had been \$14,380.83 in damages and loss and that the tenant was to pay the landlord the balance of \$10,880.83 by February 28, 2011.

The tenant in this application is seeking \$7000.00 in return of double the deposits held by the landlord.

The landlord's agent testified that the deposits had not been returned to the tenant due to the extensive amount of damage to the rental unit and that a claim had not been filed against the deposit as the landlord was new to the province and did not understand the laws here. Clarification was made that as this is the tenant's application the landlord

may not proceed with a claim for damages or loss against the tenant in this hearing but may pursue a claim by filing their own application through this office.

It was clarified for both parties that per section 19 of the *Act*: *A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.* In this tenancy the landlord requested a 'rental deposit' and a 'damage deposit' which equaled a full month's rent and the landlord had the right to accept only ½ month's rent as a security deposit.

Law

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (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.***

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit. The landlord was provided the tenant's forward address in writing on February 1, 2011 but to date have not filed a claim against the deposits nor returned the deposits to the tenant. As the landlord has not complied with section 38 of the Act regarding the return of deposits, the tenant is entitled to return of double the deposits held by the landlord.

I find that the tenant has established a claim for \$7000.00 in return of double the security deposit.

Conclusion

I find that the tenant has established a monetary claim for **\$7000.00**.

A monetary order in the amount of **\$7000.00** 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.

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: June 10, 2011.

Residential Tenancy Branch