



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAL-DEN INV (BC) LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit and pet deposit?

Background and Evidence

The tenancy commenced October 1, 2011 and the tenants paid a security deposit of \$375.00 and a pet deposit of \$375.00. The monthly rent of \$770.00 was payable on the 1st day of the month. A move-in inspection report was prepared and provided to the tenants at the beginning of the tenancy. The tenants gave written notice to end the tenancy on November 23, 2012 and included their forwarding address in the notice to end tenancy. The tenancy ended December 31, 2012 and a move-out inspection report was prepared and provided to the tenants.

The landlord issued a partial refund of the deposits by way of a cheque in the amount of \$282.50 to the tenants. The cheque and the security deposit statement that accompanied it were dated January 15, 2013. The envelope was posted marked January 18, 2013 and the tenants received it on January 21, 2013.

The tenants submitted that they did not authorize any deductions from the deposits, the partial refund was mailed more than 15 days after the tenancy ended, and calls they made to the landlord's office after receiving the partial refund were unreturned.

The landlord submitted that although the partial refund cheque and security deposit statement were dated January 15, 2013 he actually mailed these items to the tenants on January 11, 2013. The landlord submitted that he cannot be responsible for delays in the mail system. The landlord was of the position the male tenant authorized deductions from the security deposit and pet deposit in signing the move-out inspection report.

Both parties referred me to the move-out inspection report in support of their respective positions. The report was prepared using the standard form published by the Residential Tenancy Branch. Upon review of the inspection report, I noted the following:

- The tenant signed the report in the space provided for a tenant's signature at the bottom of the report.
- Under the heading of "End of Tenancy" are three parts:
 - Part Z. lists damage the landlord asserts the tenants are responsible;
 - Part 1. is the area where the tenant indicates whether he agrees or disagrees with the landlord's assessments indicated on the report.
 - Part 2. is the area where the tenant authorizes amounts to be deducted from the security deposit and/or pet deposit.
- Parts 1. and 2. were left blank.

The landlord acknowledged that there was no discussion at the time of the move-out inspection as to the amounts the landlord sought to deduct from the deposits since the landlord did not know what the actual costs would be at that time.

The tenant submitted that he was largely in disagreement with the landlord's assessment of the tenants' responsibility for damage and cleaning, except for damage to the blinds.

Analysis

The issue under dispute in this case is whether the landlord had the tenant's written consent to make deductions from the security deposit and pet deposit.

As the landlord was informed during the hearing, ideally tenants will sign the bottom of the move-out inspection report so there is acknowledgement that the tenant participated in the move-out inspection. However, I find the signature at the bottom of the report does not, in itself, constitute authorization for deductions since there is a separate space provided on the report (Part 2.) to specify the dollar amounts the tenant agrees

may be deducted from the deposits along with a space for the tenant's signature next to the amounts authorized.

As parts 1. and 2. of the report were left blank I find the landlord's position that the tenant agreed with the landlord's assessment of damage and deductions is unsupported by the documentary evidence before me. Rather, I find the tenant's signature at the bottom of the move-out inspection report indicates the tenant participated in the inspection as he was required to do under the Act but that the signature is not indicative of any more than that.

As I have found the landlord did not have the tenant's consent to make specific deductions from the deposits, the landlord was required to either refund the entire amount of the deposits to the tenants or file an Application for Dispute Resolution to seek authorization to make deductions within 15 days of the tenancy ending so as to comply with section 38(1) of the Act.

Where a landlord fails to comply with section 38(1) of the Act, section 38(6) requires that a landlord must pay the tenant double the amount of the security deposit and pet deposit, as applicable.

Since the landlord failed to comply with section 38(1) of the Act in this case, the landlord is now obligated to pay the tenants double the security deposit and pet deposit pursuant to section 38(6) of the Act and I grant their request for double the amount of the deposits. I also award the filing fee to the tenants.

In recognition of the partial refund cheque the tenants received January 21, 2013 and subsequently cashed, I provide the tenants with a Monetary Order calculated as follows:

Security deposit (\$375.00 x 2)	\$ 750.00
Pet deposit (\$375.00 x 2)	750.00
Filing fee	50.00
Less: partial payment received	<u>(282.50)</u>
Monetary Order for tenants	\$1,267.50

To enforce the Monetary Order it must be served upon the landlord and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

The landlord remains at liberty to file an Application for Dispute Resolution in order to recovery any damages or loss for which the tenants are responsible within the time limit specified by the Act.

Conclusion

The tenants were successful in their application and have been provided a Monetary Order in the amount of \$1,267.50 to serve and enforce as necessary.

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: April 19, 2013

Residential Tenancy Branch

