



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the tenant's application of March 26, 2013 seeking a Monetary Order for return of a portion of his security and pet damage deposits retained without consent or without the landlord having made application for dispute resolution to claim against them.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the portion of his security and pet damage deposits retained without authorization and must the amount be doubled as required by section 38(6) of the *Act*?

Background and Evidence

This tenancy began on January 1, 2010 and ended on February 28, 2013. Rent was \$995 per month and the landlord held security and pet damage deposits of \$497.50 each paid at the beginning of the tenancy.

During the hearing, the parties concurred that the tenant provided his forwarding address to the landlord by fax on March 1, 2013. The landlord advised the tenant on March 4, 2013 that she would be retaining portions of the deposit for cleaning, refuse removal and key replacement and returned \$365 of the \$995 held in deposits, retaining \$630.

The landlord stated that her firm had taken over Management of the rental building on February 1, 2012 and had not received a move-in condition inspection report.

The landlord had scheduled a move-out condition inspection for 3:30 p.m. on February 28, 2013. The tenant said he was there when the landlord and another party arrived but that she had made no approach regarding completion of the move-out condition inspection report form. The landlord stated that by the time she was prepared to do so, the tenant had left so she posted final notice of the inspection and completed it without participation of the tenant.

The landlord provided a substantial package of documentary evidence in support of a claim for damage to the rental unit, but had not made application for dispute resolution. Therefore, I cannot consider that evidence on its merits. The landlord was, and remains at liberty to make such application to claim for damages up to two years from the end of the tenancy.

Analysis

Sections 24 and 36 of the *Act* provide for extinguishment of both parties' right to claim against deposits in the event of failure to initiate or participate in move-in and move-out condition inspection reports. In the present matter, I find that these sections cannot be applied as there appears to be breaches by both parties: the landlord by failing to provide a move-in condition inspection report and the tenant by failing to participate in completion of the move-out condition inspection report.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposits.

I find as fact that the landlord retained \$630 of the tenant's security and pet damage deposits without the tenant's consent and without authorization obtained through the dispute resolution process as required by section 38(1) of the *Act*. Therefore, I find that the tenant is entitled to return of the retained portion of the deposits in double as mandated by section 38(6) of the *Act*.

As the application has succeeded on its merits, I find that the tenant is entitled to recover his filing fee for this proceeding from the landlord.

Therefore, I find that the tenant is entitled to a Monetary Order calculated as follows:

Security deposit (no interest due)	\$ 497.50
Pet damage deposit (no interest due)	497.50
Subtotal	\$995.00
Less amount of deposit returned on March 5, 2013	- 365.00
Portion of deposit retained without authorization	\$ 630.00
To double amount retained without authorization per s. 38(6)	630.00
Filing fee	50.00
TOTAL	\$1,310.00

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,310.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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 20, 2013

Residential Tenancy Branch