



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC and FF

Introduction

This hearing was convened on the tenants' application of April 2, 2013 seeking a Monetary Order for return of a portion of her security deposit retained without consent or without the landlord having made application for dispute resolution to claim against it. A claim for a bank charge as a result of the landlord having stopped payment on a cheque is moot as the landlord has reimbursed the tenant for the charge. The tenant also sought to recover the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on April 2, 2013, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of her security deposit or portion 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 October 1, 2010 and ended on February 28, 2013. Rent was \$1,600 per month plus \$100 for utilities and the landlord held security and pet damage deposits of \$800 each paid at the beginning of the tenancy.

During the hearing, the tenant gave evidence that at the end of the tenancy, the landlord had given her a cheque for the full amount of the deposits. However, shortly after, the landlord cancelled that cheque and provided another for \$1,110.53 with a claim that the rental unit had required extra cleaning and some repair.

Analysis

Security and pet damage deposits are funds that are held in trust by the landlord and may not be retained without consent of the tenant or an order arising from dispute resolution proceedings.

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.

In the present matter, I find that the landlord breached the legislation by withholding an amount from the tenant's security and pet damage deposits without consent and without having applied for dispute resolution to obtain an order authorizing of the amount sought.

Therefore, I find that the tenant is entitled to a Monetary Order for double the amount of the deposits retained without consent.

As the application has succeeded on its merits, I find that the tenant is entitled to recover the 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	\$ 800.00
Pet damage deposit	<u>800.00</u>
Subtotal of tenants' credit	\$1,600.00
Less amount of deposit returned	- <u>1,110.53</u>
Amount retained by landlord without authorization	\$ 489.47
To double amount retained without authorization	489.47
Filing fee	<u>50.00</u>
TOTAL	\$1,028.94

As a matter of note, the tenant expressed concern that the landlord had told her that if she proceeded with the present action, the landlord would contact the strata council of the housing unit purchased by the tenant with unfavourable comment.

While there appears to have been no such action, the parties should be aware that section 95(2) of the *Act* creates an offense if one party to a dispute attempts to intimidate another in order to deter or retaliate against the other for seeking a remedy under the *Act*.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$1,028.94**, 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 25, 2013

Residential Tenancy Branch

