



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERS REACH MARINA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD O

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of double his security deposit, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and "other" which the tenant describes as \$100.00 "for forced early move out".

The tenant, the landlord and the spouse of the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

During the hearing, the landlord confirmed that she received the tenant's evidence and that she had the opportunity to review the tenant's evidence prior to the hearing. The tenant stated that he did not receive the landlord's evidence. The landlord's evidence was excluded from the hearing as it was submitted late to the Residential Tenancy Branch and was not submitted in accordance with the Rules of Procedure.

Issues to be Decided

- Is the tenant entitled to the return of double his security deposit under the *Act*?
- Is the tenant entitled to additional monetary compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties disputed the start date and the end date of the tenancy; however the parties did agree that the tenancy was a month to month tenancy. The landlord stated that the tenancy began on January 13, 2013, whereas the tenant stated that the tenancy began on January 15, 2013. The landlord stated the tenant vacated the rental unit on May 31,

2013, whereas the tenant stated that he vacated the rental unit on May 30, 2013. The parties agreed that monthly rent in the amount of \$550.00 was due on the first day of each month. The parties agreed that the tenant paid the landlord a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold. The security deposit, which is more than half of the monthly rent permitted by the *Act*, will be addressed later in this Decision.

The parties referred to a previous Decision dated April 19, 2013, the file number of which has been referenced on the front page of this Decision for ease of reference. In that Decision, the landlords were granted an order of possession effective May 1, 2013.

The tenant stated that his agent, EC, served his written forwarding address dated June 13, 2013 on June 14, 2013 to the landlord. The landlord confirmed that she received the written forwarding address of the tenant. The landlord stated that she did not return the tenant's security deposit due to the tenant leaving a "mess" in the rental unit. The landlord confirmed that she has not filed an application claiming towards the tenant's security deposit and did not have permission to retain the tenant's security deposit.

The tenant stated that in addition to double his security deposit, he is claiming \$100.00 due to the landlord forcing him to vacate the rental unit one day earlier than they verbally agreed he remain in the rental unit. The tenant failed to provide any documentary evidence or other supporting testimony regarding this portion of his application.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Amount of security deposit – The landlord requested and accepted \$375.00 at the start of the tenancy. Monthly rent was \$550.00 per month. Section 19 of the *Act* states:

19 (1) 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.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the above, **I find** the maximum security deposit that the landlord could request was \$275.00. As the landlord exceeded that amount by \$100.00, **I caution** the landlord to comply with section 19 of the *Act* in the future.

Tenant's claim for the return of double the security deposit – I accept that the tenancy ended on either May 30, 2013 or May 31, 2013. I do not find it necessary to determine the exact date of the end of tenancy as the tenant did not provide his written forwarding address until June 14, 2013. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (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.

(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.

[emphasis added]

In the matter before me, the landlord confirmed that she did not submit an application claiming towards the tenant's security deposit. Furthermore, the landlord did not have permission from the tenant to deduct any amount from his security deposit. Given the above, under section 38 of the *Act*, the landlord had to return the full security deposit to

the tenant or file an application to claim towards the security deposit within 15 days of receiving the tenants' forwarding address in writing on June 14, 2013.

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on June 14, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenant is entitled to the return of double his original security deposit of \$375.00 for a total of **\$750.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy.

I dismiss the remaining portion of the tenant's monetary claim for \$100.00 due to insufficient evidence, without leave to reapply.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$750.00**, comprised of double the tenant's original security deposit. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$750.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant has established a total monetary claim in the amount of \$750.00, comprised of double the tenant's original security deposit. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$750.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 21, 2013

Residential Tenancy Branch