



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BST TRADING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security and pet deposits, for the return of rent and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant's application was originally heard on March 11, 2015. The landlord is a limited company and was represented by counsel (CW) at the hearing on March 11, 2015. The owner was unable to attend that hearing as he was out of the country. CW requested an adjournment to give the owner an opportunity to attend and testify. The matter was partially heard. An adjournment was granted and the matter was scheduled to be heard on this date April 23, 2015. The owner and CW attended this hearing.

At the start of this hearing, CW requested that the matter be adjourned again because he had other commitments and would only be able to attend the hearing for 30 minutes. He also stated that the landlord had made application for dispute resolution on April 08, 2015 and this matter was set to be heard on September 15, 2015. CW requested that the tenant's application also be heard on that date.

Residential Tenancy Branch Rules of Procedure 6.3 states that at any time after the dispute resolution proceeding commences, the Arbitrator may adjourn the proceeding to a later time at the request of any party.

Rule 6.6 states that if the Arbitrator determines that it is not appropriate to grant a request for an adjournment the dispute resolution proceeding will proceed.

In this case, the matter had already been partially heard on March 11, 2015 and I estimated that the hearing would more likely than not be completed within 30 minutes. Since the purpose for which the adjournment was sought would not contribute to and was not related to the resolution of the matter at hand, I denied the landlord's request for an adjournment and the hearing proceeded as scheduled.

I also decided that if in the event the hearing was not completed within 30 minutes, I would revisit the landlord's request for an adjournment.

After approximately 28 minutes, CW left the hearing. The tenant's application was dealt with in its entirety within the 28 minutes of hearing time. The possibility of a settlement was also discussed during the hearing. After CW left the hearing, the only matter left to be discussed was the confirmation of the addresses of both parties. The hearing ended approximately one minute after CW left the hearing.

Issues to be Decided

- Did the tenant provide the landlord with her forwarding address in writing?
- Did the landlord apply to retain the security deposit in a timely manner?
- Did the landlord have the tenant's consent in writing to retain all or a portion of the deposits?
- Is the tenant entitled to the return of double the security and pet deposits?
- Is the tenant entitled to the return of rent and the recovery of the filing fee?

Background and Evidence

The tenancy started on May 15, 2013 for a fixed term ending May 15, 2014. A copy of the tenancy agreement was filed into evidence. The monthly rent was \$1,200.00 payable on the first of each month. The option requiring the tenant to move out at the end of tenancy was not checked or initialled. Accordingly, the tenancy would continue on a month to month basis after May 15, 2014.

At the start of the tenancy, the tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 for a pet cat. The tenant stated that she paid the landlord an additional pet deposit of \$600.00 on August 18, 2013 after she acquired a dog. The tenant filed copies of both pet deposit cheques which are dated June 11, 2013 and August 18, 2013. The phrases "*pet deposit*" and "*pet deposit (dog)*" are written on the face of the cheques in the bottom left corner. The tenant also filed copies of the backs of the cheques to show that they were cashed on June 19, 2013 and August 19, 2013 respectively.

The tenancy agreement indicates that the tenant paid a security deposit of \$600.00 on May 06, 2013. The tenant did not provide a copy of the cashed cheque.

On April 08, 2014, the tenant sent the landlord an email informing him that she would be vacating the rental unit on May 15, 2015 - the end date of the tenancy.

In that note, the tenant requested an extension of the tenancy up to May 31, 2015 and added that if she did not hear back from the landlord, she would move out on May 15, 2015. The tenant sent a reminder note on April 17. On April 20, 2014, the tenant notified the landlord that since she had not heard back from him about extending the tenancy, she would move out on May 15, 2014.

The tenant stated that at the start of the tenancy, the landlord was provided with post-dated rent cheques dated the first of each month. The landlord received a cheque dated May 01, 2014 for the full amount of rent. The tenant requested the landlord to return half a month's rent since the tenancy ended on May 15, 2014 and the landlord refused to.

The landlord stated that by providing notice to end the tenancy on April 08, 2014 in an email, the tenant had not provided adequate notice to end the tenancy.

The tenant stated that she moved out on May 15, 2014 and provided the landlord with a forwarding address on May 19, 2014.

The landlord made application to keep the security deposit on May 28, 2014 which is within the legislated timeframe of 15 days. However neither the landlord nor the tenant attended the hearing. The landlord stated that the reason for not attending the hearing was that, prior to the hearing; the parties discussed their dispute and came to an agreement to settle. The tenant agreed that a conversation between the two parties took place but denied having agreed to settle the matter. There is no written agreement or record of the conversation.

On December 23, 2014, the tenant made this application for the return of double the security and pet deposits.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord her forwarding address on May 19, 2014. I find that the landlord made an application for dispute resolution within 15 days of receiving the tenant's forwarding address but did not attend the hearing. The landlord stated that he had settled the matter with the tenant and he was permitted by the tenant to retain the deposits. The tenant denied having come to an agreement with the landlord regarding the retention of the deposits.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, in this case the landlord has the onus of proving, during these proceedings, that the tenant agreed to allow him to retain the deposits. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I am not prepared to interpret the alleged agreed-upon terms and I find that the landlord did not obtain the tenant's consent in writing to retain the deposits.

Section 38 (4) of the *Residential Tenancy Act* states that a landlord may retain an amount from the security deposit or a pet damage deposit if, 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 after the end of the tenancy, the director orders that the landlord may retain the amount.

In this case the landlord did not have the written consent of the tenant nor did the landlord have an order from the director to retain the deposits. Therefore the landlord was required to return the deposits to the tenant. The landlord failed to do so and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposits.

Based on the documents filed into evidence, I find that the tenant paid a total of \$1,800.00 in security and pet deposits. Accordingly, the landlord must return \$3,600.00 to the tenant.

Regarding the return of rent, I find that the end of the fixed term was May 15, 2014 and the tenancy would continue as a month to month tenancy.

A term in the tenancy agreement states "the tenancy is for a fixed term ending on the 15 day of May 2014." The agreement had two options for the tenancy after May 15, 2014.

One option was to continue as a month to month tenancy or continue for another fixed length of time unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term.

The other option was the tenancy ends and the tenant must move out. This option required initials of both parties beside the term.

The parties selected neither option and since the option requiring initials of both parties was not initialed, I find that the first option applies which implies that the tenancy would continue as a month to month tenancy unless the tenant gave written notice to end the tenancy at least one clear month before the end of the term.

In this case, the end of the term was May 15, 2014 and the tenant provided written notice by way of an email dated April 08, 2014. The notice requested additional time until May 31, but clearly stated that the tenant would move out May 15, 2014 if the landlord was unable to grant an extension of the tenancy. By April 20, 2014, the tenant had not heard back from the landlord regarding the extension and therefore confirmed that the end of tenancy would be May 15, 2014.

Based on the term of the tenancy agreement, the tenant was required to provide one clear month before the end of the term. Since the term ended on May 15, 2014, I find that by providing notice on April 08, 2014, the tenant provided at least one clear month of notice and was required to pay rent up to the last day of the term which is May 15, 2014.

The tenant's cheque for rent was made out at the start of tenancy and included the latter part of May after the tenancy ended. Accordingly, I find that the landlord must return the balance of rent to the tenant in the amount of \$600.00

Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$4,250.00 which consists of \$3,600.00 for the return of the deposits, \$600.00 for the return of rent and \$50.00 for the recovery of the filing fee.

Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$4,250.00**.

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 23, 2015

Residential Tenancy Branch

