



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and with her forwarding address in writing on November 3, 2014. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$750 on February 15, 2014 and agreed to rent the unit for \$1500 a month on a fixed term lease until February 28, 2015. The tenant said she was evicted and vacated the unit on November 3, 2014. The landlord agreed these facts were correct. The tenant's deposit has never been returned and she gave no permission to retain any of it.

The landlord said they retained the deposit to apply to an arbitrator's monetary order for \$3,250 of which only \$1250 was paid by a third party for the tenant. After applying the security deposit, the landlord states that \$1250 is still outstanding. In evidence is the previous decision dated September 14, 2014 which recorded a settlement agreement made by the parties. The agreement was that the tenancy would end on October 31,

2014 and the tenant would pay the landlord \$1,750 no later than September 30, 2014 for outstanding rent and a further \$1500 for October rent no later than October 7, 2014. The landlord was issued an Order of Possession and a monetary order for \$3,250 in support of the settlement. Both agents of the landlord gave sworn evidence that they had received only \$1250 of this monetary order and it was paid by a third party on September 29, 2015.

The tenant contended that she had paid a further \$1500 for October rent. She was given time in the hearing to check her records – email and bank- to verify this payment with some details. However, she was unable to provide any verification.

In evidence is a copy of the previous decision and monetary order and a photograph of the tenant's forwarding address together with the keys to the unit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

However Residential Policy Guideline 17, item 4 under Return and Retention of Security Deposit addresses the situation where the landlord has obtained a monetary order from an arbitrator and it has not been paid. It notes that in determining an amount to be doubled, any arbitrator's monetary order outstanding at the end of the tenancy is excluded. Also section 38(3) of the Act states that a landlord may retain from the security deposit an amount that the director has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid.

I find the landlord's evidence credible that the tenant had an unpaid rent amount of \$2,000 remaining at the end of the tenancy. This was from the arbitrator's monetary order dated September 24, 2014 for \$3,250 after applying a third party payment of \$1250 for her. I find the landlord legally retained the deposit to apply to this outstanding amount pursuant to section 38(3) of the Act and Policy Guideline 17. I find the tenant now owes \$1250 after applying the security deposit to the debt.

Although the tenant contended she paid a further \$1500, I find the landlord's evidence more credible that they never received this from her as she was unable to verify any dates or sources of payment, although given time in the hearing to look up her records, whereas the landlord had careful records of the one payment which was made and from whom it was received.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was involved.

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 18, 2015

Residential Tenancy Branch

