



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The tenant's claim sets out that she is seeking \$625.00 in compensation for return of the remainder of her security and pet damage deposits (the deposits) as well as doubling of the security deposit amount. The tenant stated at the hearing that she was waiving doubling of the pet deposit amount and only sought its return.

The tenant appeared. The landlord JV (the landlord) appeared and confirmed that she had authority to act on behalf of both landlords. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of the deposits as a result of the landlords' failure to comply with the provisions of section 38 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant claims for \$625.00:

Item	Amount
Return of Remainder of Security Deposit	\$100.00
Return of Pet Damage Deposit	100.00
Compensation pursuant to subsection 38(6) on Security Deposit	425.00
Total Monetary Order Sought	\$625.00

This tenancy began 4 July 2012 and ended 1 October 2013. Monthly rent was \$850.00. At the beginning of the tenancy the landlord collected \$425.00 as a security deposit and \$100.00 as a pet damage deposit. Neither a condition move-in inspection nor condition move-out inspection were completed.

The tenant testified that on 1 October 2013 she provided her forwarding address in writing to the landlord. The landlord testified that she could not recall either way if this was true.

On 10 October 2013 the landlords sent an electronic transfer in the amount of \$325.00 to the tenant. The landlords' submissions set out that \$100.00 was deducted for mess created by the tenant's pets and \$100.00 was deducted for the tenant's failure to shampoo the carpets.

Analysis

Section 38 of the Act sets out relevant rules dealing with security deposits:

- 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...

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) 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,
...
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (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...

On the basis of the tenant's contradicted testimony, I find that the tenant provided her forwarding address in writing to the landlords on 1 October 2015. Accordingly, the landlords had until 16 October 2015 to return the tenant's security deposit.

The landlords did not complete a condition move-in or move-out inspection with the tenant. Accordingly, their right to claim against the security deposit was extinguished by this failure pursuant to both subsection 24(2) and 36(2). Thus, the landlords could not retain amounts pursuant to paragraph 38(4)(a) even if the tenant agreed to it in writing because of the operation of subsection 38(5) of the Act. This extinguishment would not prevent the landlord from claiming in damages for the amounts.

On the basis that the landlords' right to retain against the deposits had been extinguished, the tenant is entitled to the remainder of her deposits back.

The landlords only returned part of the tenant's security deposit to her within 15 days of receiving the tenant's forwarding address in writing. Accordingly, the landlords did not comply with subsection 38(1) of the Act.

Residential Tenancy Policy Guideline, “17. Security Deposit and Set off” sets out that:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
 - If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;
 - If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;
 - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
 - If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;
 - whether or not the landlord may have a valid monetary claim.
4. In determining the amount of the deposit that will be doubled, the following are excluded:
 - any arbitrator’s monetary order outstanding at the end of the tenancy;
 - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
 - if the landlord’s right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

The tenant has waived doubling of the pet damage deposit. The tenant has not waived doubling of the security deposit. There is no provision in the Act or policy guideline for excluding the amount returned. On this basis, and pursuant to subsection 38(6) of the Act, the tenant is entitled to a monetary award equivalent to the full amount of the security deposit for the landlords’ failure to return the entirety of the security deposit within 15 days of receipt of the tenant’s forwarding address.

Conclusion

I issue a monetary order in the tenant’s favour in the amount of \$625.00 under the following terms:

Item	Amount
Return of Remainder of Security Deposit	\$100.00
Return of Pet Damage Deposit	100.00
Compensation pursuant to subsection 38(6) on Security Deposit	425.00
Total Monetary Order	\$625.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 12, 2015

Residential Tenancy Branch

