



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

At the outset of this proceeding the Landlord asserted that the applicant A.W. was not the Tenant and was not the person who had paid the security deposit.

A.W. testified that M.K. was the initial Tenant and after approximately two years into his tenancy she began occupying the rental unit. She argued that she was added to the written tenancy agreement and the original Tenant, M.K., is her spouse. She stated that she did not know she had to name both of them in the application. She indicated that M.K. was close by and offered to add him to the hearing.

A brief discussion took place during which the Landlord submitted that the applicant, A.W. was added to the tenancy as an occupant and not as a tenant. The Landlord indicated that he preferred the application be amended to add M.K. as an applicant if he attended the hearing.

A.W. then went to where M.K. was located and M.K. was added to the hearing. I informed M.K. of what transpired prior to him being added to the hearing. Each person was in agreement to amend the application to add M.K. as an applicant Tenant to this proceeding.

An occupant is defined in the *Residential Tenancy Policy Guideline* 13 as follows:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based on the above, and in absence of documentary evidence to prove that A.W. was added to the written tenancy agreement as a tenant, the style of cause was amended to add M.K. as applicant Tenant and identify A.W. as an occupant, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 15, 2015 and amended on August 6, 2015. The amended application indicated that the Tenant and Occupant were seeking to obtain a Monetary Order of \$507.50 for the doubling of their

security deposit and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, (Landlord) and both applicants as amended, (Tenant and Occupant). I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony and the Landlord confirmed receipt of the documentary evidence submitted by the Tenant and Occupant and no issues were raised regarding service or receipt of that evidence. The Landlord did not submit documentary evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to the return of double their security deposit?

Background and Evidence

The undisputed evidence was the Tenant entered into a written tenancy agreement that began on October 1, 2010. Initially rent of \$1,015.00 was due on or before the first of each month and was subsequently increased to \$1,200.00 per month. On or before October 1, 2010 the Tenant paid \$507.50 as the security deposit. Sometime in 2012 the Occupant began residing in the rental unit with the Tenant. The move in condition inspection report form was completed and signed by both parties on October 1, 2010.

The Tenant and Occupant submitted evidence that on February 28, 2015 they gave proper written notice to end their tenancy effective March 31, 2015. They vacated the rental unit early and on March 30, 2015 they attended the move out inspection. The Tenant signed the condition report form agreeing to a total deduction of \$186.90 from his \$507.50 security deposit.

The Tenant returned possession of the rental unit to the Landlord on March 30, 2015. The Tenant provided their forwarding address to the Landlord on the move out inspection report form on March 30, 2015.

The Tenant submitted evidence that they did not receive the \$320.60 balance of their security deposit within the required 15 day period. Rather, they received a cheque and a "Move Out Statement" on April 17, 2015 by regular mail. The envelope containing that

cheque was post marked April 14, 2015. The cheque was dated April 14, 2015 and was issued in the amount of \$340.60.

The "Move Out Statement" submitted into evidence indicated that the Tenant's \$340.60 refund cheque was comprised of \$20.00 for the Access Card Deposit refund, plus \$507.50 security deposit less \$52.50 suite painting, \$73.50 carpet cleaning, \$60.90 blind cleaning ($\$20.00 + \$507.50 - \$52.50 - \$73.50 - \$60.90 = \340.60).

The Tenant and Occupant argued that the security deposit refund was not returned within the required 15 day period as it was not received until April 17, 2015. They stated that this delay caused them financial hardship. As a result they are now seeking the return of the doubling portion of \$507.50.

The Landlord testified that he agreed that the refund cheque was issued April 14, 2015 and that it was mailed to the Tenant that day. He stated that he could not argue with the fact that the Tenant did not receive the cheque until April 17, 2015.

The Landlord asserted that the security deposit refund was paid within the required 15 days as the cheque was issued and mailed on April 14, 2015. He argued that it is their Company's interpretation that the *Act* requires them to release or issue the payment within 15 days and not that the payment has to be received within 15 days.

Analysis

The *Residential Tenancy Act* (the *Act*) and Residential Tenancy Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding the End of Tenancy:

Section 44 of the *Act* stipulates that a tenancy ends on the earlier of the following: 44(1)(d) when the tenant vacates or abandons the rental unit or 44(1)(a)(i) the tenant gives notice to end the tenancy in accordance with section 45.

Regarding the Return of the Security Deposit:

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Section 88 of the *Act* states in part, methods of service for all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person.

Section 88(c) of the *Act* provides that documents referred to in this section may be given or served by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.

Section 90(a) of the *Act* provides in part, that a document given or served in accordance with section 88 or 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

The Security Deposit

Section 1 of the *Act* defines a security deposit, in part, as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property.

Doubling of the Security Deposit:

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Policy Guideline 17 provides for the return or retention of the security deposit through arbitration as follows:

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;
- 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.

Regarding the Monetary Award:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding Filing Fee:

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

In this case the effective date of the Tenants' notice was March 31, 2015. However, the Tenant vacated the unit and returned the keys and possession of the unit back to the Landlord on March 30, 2015. Therefore, I find this tenancy ended March 30, 2015, pursuant to section 44(1)(d) of the Act.

On March 30, 2015 the Tenant signed the condition report agreeing to deductions of \$186.90 from the security deposit. Therefore, I conclude the Landlord was holding the remaining security deposits of **\$340.60** (\$507.50 security deposit plus \$20.00 access card deposit less \$186.90) in trust which was required to be disbursed in accordance with section 38(1) of the Act.

The tenancy ended March 30, 2015, as noted above, and the Landlord received the Tenant's forwarding address on March 30, 2015. Therefore, the Landlord was required to either repay the \$340.60 deposits in full to the Tenant by April 14, 2015 or file for dispute resolution no later than April 14, 2015.

I do not accept the Landlord's submission that they are complying with section 38 of the Act by releasing or mailing the deposit refund within the required 15 day period. Rather, I conclude that a payment or repayment has not been made until the payment has actually been received, pursuant to section 62(3) of the Act.

In this case, the post mark on the envelope which included the security deposit refund cheque of \$340.60 was post marked April 14, 2015. The undisputed evidence was the Tenant did not receive that envelope until April 17, 2015.

When service is conducted by regular mail the respondent is deemed to have received the item five days after it was mailed, pursuant to section 90(a) of the *Act*, unless there is evidence to prove the contrary. In this case the evidence was the Tenant received the refund cheque on April 17, 2015, three days after the required time frame.

As per the foregoing, I conclude that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to the doubling provision stipulated in Section 38(6) of the *Act*.

After consideration of the foregoing, I conclude that the Tenant and Occupant submitted sufficient evidence to prove the merits of their application. Accordingly, I award monetary compensation for the return of the doubling portion of the security deposit currently held by the Landlord in the amount of **\$340.60**, pursuant to sections 38(6) and 67 of the *Act*.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant and Occupant have succeeded with their application and were awarded monetary compensation of \$340.60 plus the \$50.00 filing fee.

The Tenant has been issued a Monetary Order for **\$390.60** (\$340.60 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court and enforced as an Order of that Court.

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: September 22, 2015

Residential Tenancy Branch

