



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARINE VIEW MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

Pursuant to section 58 of the *Act*, I was designated to hear this matter. This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent; authorization to retain the tenant's security deposit; and authorization to recover the filing fee for the application. The tenant applied for authorization to obtain a return of all of her security deposit pursuant to section 38 and authorization to recover her filing fee from the landlord pursuant to section 72.

While the Tenant attended the hearing by way of conference call, the Landlord did not, although I waited until 1:45 p.m. in order to enable the Landlord to connect with this teleconference hearing scheduled for 1:30 p.m. Rule 10.1 of the Rules of Procedure provides that,

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant's participation in this hearing, I order the landlord's application dismissed without liberty to reapply.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit and her pet damage deposit?

Is the tenant entitled to an amount equivalent to her combined deposits for the landlord's contravention of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on July 1, 2014 and was for a fixed term of one year, but the tenant vacated the rental unit on July 31, 2014. The rental amount of \$950.00 was payable on the first day of each month. The tenant provided evidence that a security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid at the outset of the tenancy.

A prior Residential Tenancy Branch Dispute Resolution hearing addressed the tenant's original application for the return of her security deposit. That decision, dated June 26, 2015 dismissed the tenant's application with leave to re-apply. The decision also provided the following guidance for the landlord and tenant,

The tenant indicated that she provided a written forwarding address on the move-out condition inspection report... I find that the tenants did not meet their burden of proof to show, on a balance of probabilities, that they provided the landlord with a forwarding address in writing, in accordance with the *Act*.

The landlord has now been notified of the tenants' forwarding address by way of the tenants' application for this hearing. The landlord acknowledged this fact in his testimony during the hearing. Accordingly, the tenants' application for the return of their security and pet damage deposits is dismissed with leave to reapply. The landlord is put on notice that it is deemed to have received the tenants' written forwarding address on June 23, 2015, the day of this hearing.

[emphasis added]

The writer of that decision found,

...The landlord has until **July 8, 2015** to either return the tenants' deposits in full, or to file an application to retain any portion of the deposits... If either of the above actions does not occur, the tenants have leave to reapply for a monetary award of double their deposits.

While the landlord filed an application to retain the tenant's deposits, no one attended on behalf of the landlord to support that application and the application is dismissed. The tenant testified that her address and contact information have not changed since the last hearing. The tenant testified, providing supporting evidence, that she served the landlord with her most recent application for return of her security and pet damage deposit by sending her Application for Dispute Resolution package to the residential premises where the landlord conducts business and where the tenant resided in the rental unit. She testified that she sent the dispute resolution package including the notice of hearing to the landlord by registered mail. She provided the Canada Post receipt and tracking information for this mailing. She provided sworn undisputed

testimony that, despite her attempts to contact the landlord, her security and pet damage deposit have not been returned.

Analysis

In this circumstance, I am able to refer to the previous RTB decision to confirm that the landlord has received the tenant's forwarding address. The landlord was also given clear instructions, within the previous decision, as to the steps he must take to retain the deposits. I accept the tenant's sworn and undisputed testimony that her security and pet damage deposit have not been returned to her by the landlord.

As discussed in the previous RTB decision, section 38(1) of the *Act* requires a landlord, within 15 days 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 security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed at the previous RTB hearing of the tenant's forwarding address and that he had 15 days to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or 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." The tenant testified that she did not agree to allow the landlord to retain any portion of her security or pet damage deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposits, section 38(4)(a) of the *Act* does not apply to the tenant's security or pet damage deposit.

The tenant seeks return of both her \$475.00 security and \$475.00 pet damage deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenant's deposits on the final day he was able to make such an application, his application was dismissed. I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Given that the landlord's application to claim against the tenant's deposits is dismissed and that the tenant has proved that neither deposit has

been returned, I find that the tenant is entitled to a monetary order including \$950.00 for the return of the full amount of her security and pet damage deposits.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

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.*

Based on the undisputed, sworn evidence of the tenant before me, I find that the landlord has neither successfully applied for dispute resolution nor returned the tenant's security or pet damage deposit in full within the required 15 days. The tenant gave sworn oral testimony that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of her security and pet damage deposits with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Pet Damage & Security Deposits (\$475.00 + \$475.00= \$950.00)	\$950.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	950.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1950.00

The tenant is provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: December 22, 2015

Residential Tenancy Branch

