



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

The Tenant is applying for return of the security deposit and recovery of the cost of the filing fee.

It was determined that the Landlord was served with the Tenant's documentary evidence by registered mail sent on June 29, 2015.

Preliminary Issue – Adjournment Request

At the beginning of the Hearing, the Landlord requested an adjournment. She stated that she had her own claim to file for damages and that she had not had time to prepare for the Hearing. The Landlord testified that her father was ill and subsequently died and that she "left everything in Canada" to attend to her father, who lived overseas. The landlord stated that after she returned to Canada, she had emergency eye surgery at the end of October, 2015.

The Tenant objected to an adjournment

This Application for Dispute Resolution was made before October 26, 2015, and therefore the previous Rules of Procedure apply. Rule 6.2 of those Rules provides:

6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding by:

a) submitting to the Residential Tenancy Branch, at least 3 business days before the dispute resolution proceeding, a document requesting that the dispute resolution

proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or
b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

In this case, the Landlord attended the Hearing, but did not provide documentary evidence in accordance with Rule 6.2(a) with respect to her request. For example, the Landlord did not provide documentary evidence of her trip overseas, or the reason for the trip, or a letter from her doctor confirming that she had emergency eye surgery.

Rule 6.4 provides the following with respect to considerations an arbitrator must apply when considering a request for adjournment:

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

I explained to the parties that the Tenant's Application is very narrow and based on the provisions of Section 38 of the Act, which deals with security deposits and that the Landlord remains at liberty to make her own application for damages under Section 67 of the Act. I find that an adjournment would not prejudice the Landlord, and may prejudice the Tenant, who has been waiting for a decision with respect to the security deposit since June, 2015. I further find that the Landlord had sufficient notice of the Tenant's Application. Therefore, I did not grant the adjournment and the Hearing proceeded.

Issue to be Decided

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy ended on April 30, 2015. The Tenant paid a security deposit in the amount of \$450.00 on January 26, 2015. The Tenant provided the Landlord with written notification of her forwarding address on June 2, 2015, by registered mail. A copy of the letter was provided in evidence.

The Tenant did not agree that the Landlord could keep any of the security deposit.

The Tenant provided a Monetary Order Worksheet, which seeks the following:

The equivalent of double the amount of the security deposit	\$900.00
Cost of steam cleaning the carpets	\$129.36
Cost of registered mail documents	\$35.60
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$1,194.96

Analysis

I dismiss the Tenant's claim with respect to carpet cleaning and the cost of registered mail, for the following reasons:

- The Tenant's Application for Dispute Resolution only indicates that she is seeking a monetary award with respect to the security deposit and recovery of the filing fee. A party cannot amend an Application by simply providing documentary evidence (the Monetary Order Worksheet). The Rules of Procedure set out the mechanism for amending an Application.
- There is no provision in the Act for recovery of the cost of serving another party with documents.

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Landlord did not return the security deposit or file an application for dispute resolution against the security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, in the amount of **\$900.00**).

The Tenant's Application has been successful, and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$950.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 21, 2015

Residential Tenancy Branch

