



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD FF

Introduction

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 and for damage to the unit pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:16 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. She testified that she served the landlord with her application for dispute resolution by registered mail on July 24, 2015. She provided a copy of the Canada Post receipt and tracking number. She testified that she confirmed that the package had been received through the tracking information online. Given this evidence, I find that the landlord was deemed served with the tenant's application for dispute resolution on July 29, 2015 (5 days after its registered mailing).

Rule 10.1 of the Rules of Procedure provides as follows:

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 landlord's participation in this hearing, I order the landlord's application for a monetary order dismissed without liberty to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The tenant submitted a copy of the residential tenancy agreement. This tenancy began on December 1, 2010 with a rental amount of \$1000.00 payable on the first of each month. The tenant testified that she vacated the rental unit on May 31, 2015 after receipt of a 2 Month Notice to End Tenancy for Landlord's Use was issued to her. She testified that, on May 31, 2015, she returned the keys to the landlord. She testified that, on May 31, 2015, the landlord and tenant did a walk through inspection of the rental unit and provided her forwarding address to the landlord. The tenant testified that she was told by the landlord that they were satisfied with the condition of the rental unit and even offered to compensate her for items that she had bought for the unit.

The tenant testified that, on June 5, 2015, she sent an email to the landlord requesting that they return her security deposit. She testified that on June 17, 2015, she sent a letter to the landlord asking for the return of her security deposit. She submitted a copy of that letter for this hearing. That letter included her forwarding address. She testified that she had previously provided the forwarding address in writing and, to this date has received no response from her letter. She made an application to recover her security deposit and an amount equal to her deposit for the landlord's failure to return her deposit as required by the *Act*.

Analysis

In this circumstance, the tenant provided undisputed evidence supported by documentary submissions that she vacated the residence on May 31, 2015. She provided evidence that the landlords hold a security deposit in the amount of \$500.00. She provided undisputed sworn testimony that the deposit has not been returned to her. While the landlord made an application to recover damage to the rental unit, they did not attend in support of their application. Further, their application was made 6 months after the tenant vacated the rental unit.

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 of the forwarding address by June 17, 2015 in letter form. The tenant testified that the address was provided on earlier dates, as well. The landlord had 15 days after June 17, 2015 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 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 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 security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenant's deposit, they did so 6 months after the end of the tenancy and the provision of the tenant's forwarding address. As well, the landlord did not attend the hearing in support of that application. I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Given that the landlord was aware of this hearing and aware of the tenant's forwarding address, I find that the tenant is entitled to a monetary order including \$500.00 for the return of the full amount of her security deposit.

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 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 deposit 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 dismiss the landlord's application in its entirety.

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

Item	Amount
Return of Security Deposit	\$500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1050.00

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: January 15, 2016

Residential Tenancy Branch

