



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnr, mnsd, ff

Introduction

The tenant applies for the return of the tenant's security deposit, doubled, less a portion already returned by the landlord. The landlord in turn applies for payment of some outstanding rent by the tenant.

Both parties attended the hearing, and there are no issues as to service of the respective applications or as to the exchange of evidence.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, doubled?

Is the landlord entitled to recover unpaid rent from the tenant?

Background and Evidence

The relevant facts in this dispute are as follows:

The tenancy began August 15, 2014 and ended August 31, 2015. Rent was \$950.00 per month, and the tenant paid a security deposit of \$475.00 at the start of the tenancy.

On September 3, 2015, the tenant received \$397.00 of the deposit from the landlord. The landlord retained \$78.00 of the deposit. There was no consent by the tenant permitting this deduction. No claim for the \$78.00 was filed by the landlord within 15 days of receiving the tenants forwarding address (which the landlord acknowledged receiving on September 2, 2015).

The landlord had been away from the premises over Christmas, 2014 leaving a radio playing that disturbed the tenant, and to get some peace he spent a night at the Ramada Vancouver. The tenant unilaterally deducted \$78.00 from rent in the month of January, representing the cost of this night at the hotel. The tenant never filed a formal claim for the \$78.00 sum, and the landlord never served an eviction notice for unpaid rent. The landlord, however, unilaterally deducted this sum from the tenant's deposit at the end of the tenancy.

Analysis

In most situations, section 38(1) of the Residential Tenancy 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, to either return the tenant's full deposit or file an application to retain some or all of the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). In terms

of the claim by the tenant, I note that the tenant recovered most of the security deposit on September 3, 2015. Thereafter the landlord continued to hold a \$78.00 deposit, and failed to return it, or make a claim for it, within the mandatory 15 day period. The doubling provisions apply, but only to the \$78.00 remainder of the deposit. The tenant is therefore awarded the sum of \$156.00. As the tenant is successful with a portion of his claim, the tenant may also recover his \$50.00 filing fee from the landlord. The total sum found owing by the landlord to the tenant is \$206.00.

Section 26 of the Residential Tenancy Act requires that a tenant pay rent when due, whether or not a landlord complies with the Act or tenancy agreement, or the tenant has a right under the Act to deduct a portion of the rent (an example of which would be a deduction for emergency repairs, or pursuant to a prior order of an arbitrator). The present case the tenant has never filed a claim or received any order regarding the radio incident, and the landlord never consented to any deduction from the rent. The tenant therefore failed to pay the full rent as and when due, and the landlord is entitled to an order for \$78.00 from the tenant. As the landlord is successful with his claim, the landlord may also recover his \$100.00 filing fee from the tenant. The total sum found owing by the tenant to the landlord is \$178.00.

A set off of the award to the landlord from the award to the tenant results in a net award to the tenant of \$28.00. The landlord is ordered to pay this sum to the tenant forthwith.

Conclusion

Both the tenant and the landlord are successful in their claims, and after set off, the landlord is ordered to pay \$28.00 to the tenant.

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: March 24, 2016
Corrected April 22, 2016

Residential Tenancy Branch