



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant R ("the tenant") attended on behalf of both tenants. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit? Are the tenants entitled to an amount equivalent to the security deposit for the landlord's contravention of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on March 15, 2013. The tenants vacated the rental unit on August 31, 2015. The tenant testified that the landlord continues to hold the \$800.00 security deposit paid by the tenants on February 9, 2013. The tenant (who attended this hearing representing both tenants) testified that his co-tenant wrote a letter with their forwarding address to the landlord with the notice to end the tenancy. The landlord has not applied to retain the tenants' security deposit. However, he stated at this hearing that there were costs for damage and cleaning at the tenancy that justified his retention of the security deposit. The tenants sought a total monetary award double the amount of their original security deposit.

The tenant testified that, on the last day of this tenancy, a walk through inspection was scheduled with the landlord. He testified that he and his co-tenant (his wife) called several times to meet with the landlord on their move-out day but that the landlord did not answer or return their calls. The tenants submitted photographic evidence to show the condition of the rental unit. The photographs showed dirty carpets and walls as well as a clogged/dirty dryer filter.

The landlord testified that he attended to the residence at least twice on the tenants' move-out day but the tenants were not ready for a condition inspection to take place. The landlord testified

that he was moving in to the unit so that, once the tenants had finally completed removing all their belongings he needed to move his own belongings in. Therefore, he did not have an opportunity to create a condition inspection report or take photographs of the condition of the residence at move-out. He stated that it was “impossible” to conduct a walkthrough or take photographs.

The landlord submitted an invoice dated September 14, 2015 with respect to re-carpeting the townhouse that the tenants had vacated. The quote for work indicated an amount of \$2975.00 plus tax. The landlord submitted an invoice regarding a call on September 5, 2015 that referred to an inspection of the furnace. It described a plugged furnace filter. The landlord submitted an invoice dated September 3, 2015 “to patch nicks & dents on the walls prior to painting thruout [sic]...”. The invoice provided an amount of \$1600.00 and indicated “paid in full”. The landlord also provided a letter from a janitorial service dated September 10, 2015 to indicate that the unit “looked like it had never been cleaned.”

The landlord testified that he sent a text to the tenants on or about September 14, 2015. The landlord testified that, at that time, he advised the tenants that he would not return their deposit as he had to clean the carpets, replace the furnace filter and clean the rental unit after their move-out. He testified that the most significant damage was a large pink stain on the carpet which could not be removed.

Analysis

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 tenants’ forwarding address in writing, to either return the security 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 tenants’ security 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 deposit, the triggering event is the latter of the end of the tenancy or the tenants’ provision of the forwarding address. In this case, I accept the evidence of the tenant who provided sworn testimony at this hearing that the landlord was provided with the tenants’ forwarding address at the time of the notice to end tenancy, within the written notice to end tenancy prepared by his co-tenant/wife. I accept the tenant’s evidence at this hearing that the landlord was provided with both the notice to end tenancy and the accompanying forwarding address at the end of July 2015. The landlord had 15 days after August 31 2015 (the day the tenants vacated the residence) 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 neither he nor his co-tenant agreed to allow the landlord to retain any portion of her security deposit. As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their deposit, section 38(4)(a) of the *Act* does not apply to the tenants’ security deposit.

The tenants seek return of both their security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenants’ deposits on the final day he was able to make such an application, he 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 has not made an application to retain the tenants’ security deposit and given that I accept the evidence of the tenant with respect to the provision of the forwarding address to the landlord, I find that the tenants are entitled to a monetary order including \$800.00 for the return of the full amount of their security 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 tenants’ 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 tenants are therefore entitled to a total monetary order amounting to double the value of their 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 tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

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

Item	Amount
Return of Security Deposit	\$800.00
Monetary Award for Landlord' Failure to Comply with s. 38 of the <i>Act</i>	800.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1650.00

The tenants are 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: April 20, 2016

Residential Tenancy Branch