



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LRE, MNSD, OLC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

### Preliminary Issue:

The landlord submits this is a matter in which the Residential Tenancy Act does not apply because is "living accommodation occupied as vacation or travel accommodation." Section 4(e) of the Residential Tenancy Act provides as follows:

#### **What this Act does not apply to**

##### **4 This Act does not apply to**

- (e) living accommodation occupied as vacation or travel accommodation,

Policy Guideline #27 includes the following statement:

"The *Residential Tenancy Act* provides that the Act does not apply to vacation or travel accommodation. However, the Act would apply to summer cottages and winter

chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis.”

The lease agreement dated November 21, 2015 provided for a 5 month rental only starting on November 21, 2015 and ending on April 21, 2015. The rental unit is located in a ski area. The three tenants who signed the tenancy agreement worked on the mountain for the 5 months. The landlord required and obtained a damage deposit of \$1400. The rent was \$1400 per month payable on the 21<sup>st</sup> day of the month.

The landlord testified the rental property was rented as a fully furnished condominium. It is located in a vacation resort area. The realtor who sold it to her told that it was a vacation rental and that it is advertised on a vacation rental site. She does not have a GST number as she does not expect that her income will exceed \$30,000 and is not required to register. The tenants are all from Australia and it is likely they will be returning to Australia.

After carefully considering all of the evidence I determined that the Residential Tenancy Act applies and that I do have jurisdiction for the following reasons:

- Mr. Justice Williamson in the Supreme Court of British Columbia case of *Berry v Kloet* 2007 BCSC 257 held that where there is an ambiguity it should be resolved in favour of the benefited group (in this case the tenants) and stated as follows.

“11. I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. *Abrahams*, [1983] 1 S.C.R. 2; *Henricks v. Hebert*, [1998] B.C.J. No. 2745 (S.C.) at para. 55:

I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.”

- The parties entered into a 5 month fixed term tenancy agreement. The tenants were employed during this period. In my view this is not a situation where it can be said that this is vacation or travel accommodation. Such accommodation is usually much shorter in length. The hotel or owner would charge GST. The documents accompanying the stay would clearly state the Residential Tenancy Act applies. The fact it is fully furnished is not determinative. Many rental units are rented fully furnished. Similarly the tenants would be unaware of any representations the landlord's real estate may have made to her.

As a result I determined that I have jurisdiction and the Residential Tenancy Act applies.

#### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties entered into a 5 month fixed term November 21, 2015 and end on April 21, 2016. The rent is \$1400 per month payable in advance on 21<sup>st</sup> day of each month. The tenant(s) paid a security deposit of \$1400 at the start of the tenancy which is double what is permitted under the Residential Tenancy Act. The landlord failed to prepare a Condition Inspection Report and provide the tenants a copy at the start of the tenancy.

A dispute arose between the parties. The tenancy ended on March 20, 2016. on June 1, 2013.

The tenant(s) mailed their forwarding address in writing to the landlord on March 4, 2016. It is deemed received 5 days later. The landlord did not dispute that she received the tenant's forwarding address in writing.

The landlord filed in claim in the Provincial Court of British Columbia on March 9, 2016 claiming damages to the rental unit of \$7675 plus filing fees of \$156 for a total of \$7831,

#### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a

monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

Section 38 of the Residential Tenancy Act provides as follows:

#### **Return of security deposit and pet damage deposit**

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 58 of the Residential Tenancy Act provides as follows:

#### **Determining disputes**

- 58** (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
- (a) rights, obligations and prohibitions under this Act;
  - (b) rights and obligations under the terms of a tenancy agreement that
    - (i) are required or prohibited under this Act, or
    - (ii) relate to
      - (A) the tenant's use, occupation or maintenance of the rental unit, or
      - (B) the use of common areas or services or facilities.
- (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless
- (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
  - (b) the application was not made within the applicable period specified under this Act, or
  - (c) the dispute is linked substantially to a matter that is before the Supreme Court.

(3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act.

(4) The Supreme Court may

- (a) on application, hear a dispute referred to in subsection (2) (a) or (c), and
- (b) on hearing the dispute, make any order that the director may make under this Act.

(5) The *Arbitration Act* does not apply to a dispute resolution proceeding.

The tenants paid a security deposit of \$1400 at the start of the tenancy. I determined the tenancy ended on March 20, 2016 after the tenants gave notice they were vacating the rental unit. I further determined the tenants provided the landlord with their forwarding address in writing on March 4, 2016.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. Section 38 requires the landlord to file an Application for Dispute Resolution. Section 58 (3) provides that a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under the Act. I determined the filing of a claim in the Provincial Court (Small Claims Court) is not sufficient. The Amended Application for Dispute Resolution seeks the return of the tenants' deposit. Policy Guideline 17 includes the following statement.

3. 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<sup>15</sup>:

- 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<sup>16</sup>;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution 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.

The tenants stated at the hearing they were unaware of the doubling when they filed their Application and they were not prepared to waive their rights to the doubling of the deposit.

As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$2800.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2800 plus the sum of \$100 in respect of the filing fee for a total of \$2900.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The landlord may very well have claims against the Tenants for the breach of the fixed term tenancy and damage to the rental unit. However, she would have to file those claims with the Residential Tenancy Branch for those claims to be heard.

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 15, 2016

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Residential Tenancy Branch