



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act* regarding the return of his security deposit pursuant to section 62; 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. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Issues: Service and Understanding of the *Act*

At the hearing, the landlord testified that she had not received the materials for this hearing until January 2015. She submitted that, based on the tenant's failure to strictly meet the service requirements for an Application for Dispute Resolution, the tenant's application should be dismissed. However, the landlord acknowledged receipt of these materials approximately 4 months prior to the date of this hearing and confirmed that she had a full opportunity to review those materials. The landlord submitted her own evidence in response. She was unable to identify any further materials she might have submitted given more time.

Residential Tenancy Dispute Resolution Policy Guideline No. 12 outlines the requirements regarding service:

Generally, the object of service of documents is to give notice to the person who has been served that an action has been or will be taken against them. There is substantial case law that has held that the purpose of service is fulfilled once notice has been received.

Section 71(2) of the *Act* allows an arbitrator to hear evidence from both parties and make a finding regarding service of documents for the purposes of the *Act*. The purpose of sufficient service is to ensure procedural fairness and to allow the respondent an opportunity to respond and attend the hearing. Based on the evidence and testimony of the tenant that the Application for Dispute Resolution was sent by registered mail, I find that the landlord was deemed served on October 12, 2015 (5 days after the registered mailing). I find that the respondent, the landlord has had a full opportunity to respond to the tenant's application and materials. Therefore, I find that there is no prejudice to the landlord in proceeding with this application.

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of his security deposit? Is the tenant entitled to an order requiring the landlord to comply with the *Act* by returning his security deposit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed term tenancy was schedule to end on July 31, 2015 after a month to month tenancy with a rental amount of \$675.00 payable on the first of each month. The landlord testified that she "accepted" the tenant's notice to end tenancy on July 17, 2015. The tenant provided undisputed sworn testimony that his notice to end tenancy for July 31, 2015 included his forwarding address. Both parties agree that the tenant vacated the rental unit on July 31, 2015. The landlord testified that she continues to hold a portion (approximately \$80.00) of the original ~~\$337.50~~ \$675.00 security deposit paid by the tenant on May 1, 2015.

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TO SECTION 78(1)(A)
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June 3, 2016
AT THE PLACES INDICATED.

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After the end of this tenancy, the landlord did not make a claim to retain the tenant's security deposit. She testified that she was not aware that she was required to do so.

She testified that she kept the tenant's security deposit because she needed to clean the rental unit after the tenant vacated.

The landlord argued that the tenant should not be eligible for an amount equivalent to the amount of his security deposit as a result of her failure to return the deposit or make an application. She testified that she was not aware that this type of remedy was available to the tenant. The landlord also testified that she was not aware that she was required to conduct condition inspection reports and therefore had no photographic or documentary evidence of the condition of the unit at the start or end of the tenancy.

The tenant submitted photographs as evidence of the condition of the rental unit at the end of tenancy showing a clean rental unit. The tenant also submitted a copy of the email dated September 8, 2015 and sent to the landlord outlining the security deposit requirements under the *Residential Tenancy Act*. He submitted several other previous emails requesting receipts from the cleaning to the unit after the end of his tenancy as well as requests for the return of his deposit. The tenant submitted a copy of the bill for cleaning he received from the landlord. It is a handwritten generic receipt with no company name and an indication that \$80.00 would be deducted for cleaning. He also submitted a copy of a \$598.06 cheque from the landlord dated July 31, 2015 indicating "damage deposit".

Analysis

In this circumstance, the landlord claims that she was not aware of the requirements of the *Act* regarding security deposits. It is an inherent obligation of a landlord providing rental accommodations under the *Act* to have sufficient knowledge of their obligations. The obligations of the landlord and tenant are clearly outlined at Part 2 of the *Act* as well as referenced throughout the *Act* and the accompanying legislation. The Residential Tenancy Branch provides information regarding one's obligations through a variety of mediums. The landlord's lack of knowledge of the requirements with respect to security deposits, their return and the potential consequences of failure to return the deposit pursuant to section 38 of the *Act* does not negate her obligations as a landlord.

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 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 deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security

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 tenant's provision of the forwarding address. In this case, there is undisputed evidence that the landlord was informed of the forwarding address with the provision of the notice to end tenancy by the tenant on July 17, 2015. Therefore, the landlord had 15 days after July 31, 2015 (when the tenant vacated the rental unit) 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 he did not agree to allow the landlord to retain any portion of his 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 his deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of his security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposits within the timeframe required. The landlord did not return the full security deposit to the tenant within the timeframe required. Given that the landlord has failed to meet her obligations with regard to the tenant's security deposit, I find that the tenant is entitled to a monetary order including \$76.94 for the return of the remainder of his 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, I find that the landlord has neither 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 he has not waived his 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 an amount equal to the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

The landlord provided a cheque to the tenant in the amount of \$598.60. I accept the undisputed testimony of the tenant that he did not cash the cheque. I order that the tenant return by mail the cheque in the amount of \$598.60 dated July 31, 2015. I issue a monetary order to the tenant including the full amount of the security deposit, an amount equal to the security deposit and 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.

DECISION/ORDER AMENDED
PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT
ON June 3, 2016
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Conclusion

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

Item	Amount
Return of Security Deposit (\$675.00 - \$598.06= \$76.94)	\$337.50 \$675.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	337.50 675.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1400.00

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: May 2, 2016

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