



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD RPP FF

Introduction

The tenant applied for return of all or a portion of his security deposit pursuant to section 38; an order that the landlord return the tenant's property pursuant to section 65; 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 with documentary evidence and the tenant confirmed receipt of the landlord's documentary evidence submitted for this hearing.

Issue(s) to be Decided

Is the landlord required to return all or a portion of the tenant's security deposit?
Is the tenant entitled to the return of his property?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on April 15, 2015 with a fixed term of six months. The rental amount of \$1075.00 was payable on the first of each month. The six month term was scheduled from May 1, 2015 to October 31, 2015 however the tenant testified that he moved in to the rental unit two weeks early. The tenant testified that he provided notice to the landlord on June 1, 2016 and that the landlord agreed to the early move-out. The tenant vacated the rental unit on July 4, 2016.

The landlord testified that he continues to hold the tenant's \$537.50 security deposit that was paid at the outset of the tenancy (April 9, 2015). Both parties agreed that the landlord was provided with the tenant's forwarding address before the end of the

tenancy and that the tenant wrote the landlord requesting the return of his security deposit. The landlord testified that the tenant did not provide him with sufficient and clear notice of the date that he would end the tenancy and therefore he was justified in retaining the tenant's security deposit.

The landlord testified that he did not make an application with respect to the tenant's security deposit however, within the landlord's materials was a summary of the costs (totalling \$970.00) that he claims he incurred as a result of this tenancy including;

- 8 hours repair and cleanup: \$240.00
- 2 days loss of employment to re-rent: \$300.00
- 11 months storage of the tenant's bicycle: \$330.00

The landlord testified that the tenant asked if he pick up his bicycle at a later date after the end of his tenancy. The landlord agreed however the landlord testified that the tenant did not come to pick up his bicycle.

The landlord testified that, because he was expecting this tenancy to continue long term, the tenant should bear some responsibility for this cost of re-renting the unit. The landlord testified that, initially, the tenant advised him he would be out of the rental unit on July 1, 2016. The landlord testified that the tenant provided notice to the landlord on June 1, 2016 but that, after that date the tenant suggested to the landlord that he might stay through August 2016. Ultimately, while the tenant vacated the rental unit on July 4, 2016, the landlord submitted that he was confused and unsure of the tenant's move-out date.

The tenant submitted text messages between the tenant and landlord. They showed that the landlord was flexible with regard to the tenant's vacate date. The messages discussing the vacate date are in the first few days of June 2016. The messages also show that the tenant paid for an extra month's rent to compensate the landlord for an early end to the lease. The landlord returned the tenant's post-dated cheques payable to the landlord for rent.

The tenant would like his bicycle returned.

Analysis

Section 38(1) of the *Act* is strict in its requirements regarding 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 tenant's 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, the landlord was informed of the forwarding address in writing prior to the end of the tenancy. The tenancy ended, by the testimony of both parties, on July 4, 2016 and, after that date, the tenant requested the return of his deposit in writing. In this case, the landlord had 15 days after July 4, 2016 to either return the tenant's security deposit or make an application for dispute resolution to retain the deposit.

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 both his security deposit. The landlord has raised his concerns with respect to the tenant's early end to the fixed term as well as the tenant's failure to give clear and sufficient notice. However, the landlord has not made any application for his own monetary award nor has he made any application relating to the tenant's \$375.00 security deposit. Given the requirements that a landlord must meet to retain a security deposit and my finding, based on the testimony at this hearing that the landlord has failed to meet the requirements, I find that the tenant is entitled to a monetary order including \$537.50 for the return of the full amount 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 evidence before me as a result of this hearing, 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 a total monetary order amounting to double the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

With regard to the tenant's application for the return of his property, I find that the tenant has not provided sufficient information to order that his personal property (bicycle) should be returned. The passage of almost one year since the end of the tenancy and the limited testimony of the tenant with respect to any instructions or communication with the landlord suggest, from a practical perspective that the tenant abandoned the bicycle.

As the tenant was successful in his application with respect to his security deposit, I find he is entitled to recover the cost of the filing fee for this application.

Conclusion

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

Item	Amount
Return of Security Deposit	\$537.50
Monetary Award for Landlords' Failure to	\$537.50

Comply with s. 38 of the <i>Act</i>	
Filing fee for this Application	100.00
Total Monetary Order	\$1175.00

The tenant is provided with a formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

I dismiss the tenant's application for an order that his personal property be returned.

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: June 21, 2016

Residential Tenancy Branch