



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") 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. The landlord confirmed receipt of the tenants' evidentiary materials submitted to support their application.

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 their 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 June 2015 and was scheduled for a six month fixed term. The tenants vacated the rental unit on October 31, 2015 (the end of the fixed term). Both parties agreed that, at the outset of the tenancy, the tenants had paid a \$637.50 security deposit. Both parties agree that, as of the date of this hearing, the deposit has not been returned in full to the tenants.

The tenants testified that when they vacated the rental unit on October 31, 2015, they cleaned extensively. The landlord agreed that the unit was clean, neat and tidy on final inspection. The tenants testified that on October 31, 2015, they provided their forwarding address to the landlord.

The landlord testified that, after consideration of all of the circumstances of the tenancy, he returned \$205.94 to the tenants and retained the balance of the tenants' security

deposit. The landlord testified that during the course of the tenancy, he was required to call in a dishwasher repair person at a cost of \$108.10. He testified that he was told that the damage was “user caused”. The landlord testified that he could not locate cutting boards supplied to the rental unit at the end of this tenancy and that it was a cost to replace them. As well, the landlord testified that one of the sheets provided for the rental unit was stained/damaged and that it was a cost to replace the sheets, as well.

Both parties agreed that the tenants owed a total of \$287.46 towards utility bills when they vacated the unit: the bills has not yet arrived. The tenants agreed that this amount should be deducted from any return to them of their security deposit.

Analysis

The tenants have conceded that the landlord should be entitled to retain \$287.46 towards the utility costs at the rental unit during their tenancy but they dispute that the landlord has the right to deduct any further money from their deposit.

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 tenants 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 either tenant’s provision of a forwarding address. In this case, the landlord was informed of the forwarding address on the date the tenants moved out: October 31, 2015. The landlord had 15 days after October 31, 2015 to either return the tenants’ security deposit in full or file an application to retain a portion of 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 tenants both testified that they did not agree to allow the landlord to retain any portion of their security deposit. In fact, evidence was submitted by the tenants in the form of email correspondence with the landlord showing that they disputed his determination of the amount he would retain from the deposit. Furthermore, the tenants were candid in their testimony, supported by

the correspondence submitted that they had always agreed to allow the landlord to retain the funds to pay the final utility bill. Section 38(4)(a) of the Act does not apply to the tenants' security deposit.

The tenants seek the return of their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposits. Therefore, in accordance with the provisions of the Act outlined above, I find that the tenants are entitled to a monetary order including \$431.56 for the return of the remainder of their 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 both of the tenants before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants applied for further compensation pursuant to section 38(6) of the Act thereby affirming that they did not agree to waive this tenants' 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 the Act, I find that the tenants are therefore entitled to a total monetary order amounting to double the value of their security deposits 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 tenant as follows:

Item	Amount
Return of remainder of Security Deposit (637.50 – 205.94 returned – 287.46 utility =)	\$431.56
Minus Utility Bill amount agreed to deduct by tenants	-287.46
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	637.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$831.60

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: June 23, 2016

Residential Tenancy Branch