



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenants applied for authorization to obtain the return of all or a portion of their security deposit pursuant to section 38 of the *Residential Tenancy Act* ("the Act").

Both parties attended this hearing. One of the tenants (Tenant GB) represented both tenants at the hearing. The landlord's representative confirmed receipt of the tenants' Application for Dispute Resolution as well as their evidentiary package.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Background and Evidence

This tenancy began on December 1, 2014 as a fixed term of one year with a rental amount of \$4650.00 per month. The tenancy ended prior to the end of the fixed term at the impetus of the landlord. The tenant testified that he and his co-tenant vacated the rental unit on November 9, 2015. Both parties agreed that a security deposit of \$2325.00 were paid at the outset of the tenancy.

The tenant testified that his co-tenant had provided the tenants' forwarding address several months prior to their move-out (on approximately May 9, 2015). The tenant submitted a copy of a letter to the landlord referencing the earlier provision of the forwarding address and providing the address a second time on November 12, 2015. The tenants' evidence indicated that the landlord returned \$1873.50 of the original security deposit. The landlord's representative testified that he withheld \$451.50 of the security deposit to clean the carpets and conduct other cleaning within the rental unit at the end of the tenancy.

The landlord's representative testified that he did not obtain the written agreement of either tenant to withhold the amount for cleaning. He testified that he advised one of the tenants that he intended to retain an amount for carpet cleaning and that both tenants disagreed with the landlord's retention of any security deposit. The landlord's representative testified that he provided a receipt for the cleaning costs to the tenants but that he did not apply to the Residential Tenancy Branch to retain a portion of the tenants' security deposit. He testified that he believed it was sufficient that the tenants had signed the residential tenancy agreement that indicated a requirement that the tenants clean the carpets at the end of the tenancy.

The landlord testified that no formal condition inspection report was created at the outset of the tenancy and that he did not offer either of the co-tenants an opportunity to be present for a condition inspection at the end of the tenancy. He testified that he looked at the rental unit a day or two after the tenants vacated the unit and he determined, with consultation with the owner, that the carpets needed to be cleaned.

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 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, I accept the evidence of the tenant present at this hearing that the landlord was informed of the forwarding address in person on May 9, 2015 by tenant WB of the tenants' forwarding address. Further, the tenants submitted undisputed testimony and documentary evidence to show that the tenants' forwarding address was provided in writing on November 12, 2015. Out of an abundance of caution, I find that the landlord had 15 days after November 12, 2015 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." Tenant GB testified that he did not agree to allow the landlord to retain any portion of the security deposit. He also

provided undisputed evidence that his co-tenant did not agree to allow the landlord to retain any portion of the security deposit. As the landlord did not provide sufficient evidence that either tenant has given the landlord written authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants sought return of their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposits within the timeline required. In the circumstances, I find that the tenants are entitled to a monetary order including \$451.50 for 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 Tenant GB before me and the testimony of the landlord's representative, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. Tenant GB gave sworn undisputed 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*. The landlord did not dispute the testimony of the tenant with respect to a waiver and the landlord did not claim that the co-tenant had waived this right.

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 original security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Conclusion

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

Item	Amount
Return of Remainder of Security Deposit	\$451.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	2325.00
Total Monetary Order	\$2776.50

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: July 27, 2016

Residential Tenancy Branch

