



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- a. A monetary order in the sum of \$1157 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 the applicant and in the absence of a representative of the landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing by registered mail to where the landlord carries on business on March 22, 2016. With respect to each of the applicant's claims I find as follows:

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 written tenancy agreement that provided that the tenancy would start on March 1, 2015. The rent was \$832 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$416, a pet damage deposit of \$416 and a \$10 laundry key deposit for a total of \$842.

The tenancy ended on March 1, 2016.

The tenant(s) provided the landlord with his/her their forwarding address in writing in late January 2016.

The landlord returned \$527 of the security deposit on March 2, 2016.

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

The tenants paid a security deposit, pet damage deposit and laundry key deposit totaling \$840 at the start of the tenancy. I determined the tenancy ended on March 1, 2016. I further determined the tenant provided the landlord with his forwarding address in writing at the end of January 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. The landlord returned \$527 of the security deposit/pet damage deposit within 2 days of the end of the tenancy. The balance held by the landlord without authority is \$315.

The tenant is entitled to a doubling of the security deposit/pet damage deposit. However, the issue is whether the arbitrator should be doubling the security deposit/pet damage deposit that was paid at the start of the tenancy, the security deposit/pet damage deposit held by the landlord at the end of the tenancy or the security deposit/pet damage deposit held by the landlord at the end of the 15 day period in which the landlord has been given under the Act to return the security deposit/pet damage deposit or file a claim. I am aware of the Policy Guideline which comes to a different conclusion. However, in my view the appropriate interpretation of section 38 of the Residential Tenancy Act is it refers to the amount of the security deposit/pet damage deposit held by the landlord at the end of the 15 day period. The Residential Tenancy Act is not clear as to what amount should be doubled. Where there is an ambiguity such as this it should be interpreted in manner that would bring a fair and just result. To hold a different date has the potential to bring significant injustice. For

example, It is possible that a tenant paid a security deposit of \$600 and the landlord returned \$590 of that deposit within 15 days of the later of the end of tenancy or the date the landlord received the tenant's forwarding address in writing. In other words the landlord had complied with the provisions of the Act with the exception of holding back \$10. In my view it would amount to a gross miscarriage to double the \$600 less the amount that was paid. While the legislature has the right to impose such a penalty, it must do so clearly and without ambiguity. The most reasonable interpretation while still enforcing the policy goals of the legislature to encourage landlords to file a claim or return the deposit is to interpret that the doubling refers to the amount of the security deposit/pet damage deposit which the landlord is holding at the end of the 15 day period after the later of the end of tenancy or the date the landlord receives the tenant's forwarding address in writing.

The landlord withheld \$315 without any lawful authority at the end of the 15 day period. As a result I determined the tenant has established a claim against the landlord for double the security deposit/pet damage deposit in the sum of \$630 ($\$315 \times 2 = \630).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$630 plus the sum of \$100 in respect of the filing fee for a total of \$730.

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.

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: August 03, 2016

Residential Tenancy Branch

