



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD 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 her security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:44 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions for her application.

The tenant testified that she served the landlord with her Application for Dispute Resolution by registered mail on January 2, 2016. She submitted a copy of her receipt and tracking information for the Canada Post mailing. Based on the tenant's testimony and her documentary evidence to support that testimony, I find that the landlord was sufficiently served with the tenant's Application for Dispute Resolution.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit by the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on December 1, 2013 as a month to month tenancy with a rental amount of \$750.00 payable on the first of each month. The tenant testified that she provided a notice to vacate the residence and provided her forwarding address on December 12, 2015. She testified that, after she vacated the residence, she corresponded by text message with the landlord requesting the return of her security deposit.

The tenant testified that she left the unit in reasonably clean condition and that the landlord did not supply any condition inspection report. The tenant testified that she is not aware of any application by the landlord to retain her security deposit, that she has not received notice of either an application or a deduction by the landlord and that she has not received her security deposit from the landlord. She testified that the landlord continues to hold a \$375.00 security deposit and a \$25.00 pet damage deposit.

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 and pet damage 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 tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security and pet damage 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 in person with the end of the tenancy, when the tenant vacated the rental unit on December 12, 2015. The landlord had 15 days after December 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 (and/or pet damage) 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 she did not agree to allow the landlord to retain any portion of her security or pet damage 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 her deposits, section 38(4)(a) of the *Act* does not apply to the tenant's security or pet damage deposit.

The tenant seeks return of both her security and pet damage deposit. The landlord has not applied to the Residential Tenancy Branch to retain the tenant's deposits and did not attend the hearing. I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Based on the evidence provided, I find that the tenant is entitled to a monetary order including \$400.00 for the return of the full amount of her security and pet damage deposits.

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 before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security or pet damage deposit in full within the required 15 days. The tenant gave sworn oral testimony that she has not waived her 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 her security and pet damage 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 tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

Item	Amount
Return of Pet Damage & Security Deposits (\$375.00 + \$25.00= \$400.00)	\$400.00
Monetary Award for Landlords' Failure to	400.00

Comply with s. 38 of the <i>Act</i>	
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$900.00

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: August 26, 2016

Residential Tenancy Branch