



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for the return of their security and pet damage deposits 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 testified that he received the tenants' Application for Dispute Resolution and all evidentiary materials submitted by the tenant. The landlord testified that he did not submit any documentary evidence for this hearing. The tenant testified that she would represent herself and her co-tenant at this hearing.

Issue(s) to be Decided

Are the tenants entitled to the return the security deposit and pet damage deposit?
Are the tenants entitled to an amount equivalent to the combined deposits 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 September 1, 2013 and continued until the tenant vacated the rental unit December 31, 2015. The original rental amount of \$1700.00 was payable on the first day of each month. That amount was increased prior to the end of the tenancy. The tenant provided undisputed testimony that the tenancy ended as a result of the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use of the property. The tenant provided evidence that a security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid at the outset of the tenancy. The tenant provided undisputed evidence that neither deposit amount had been returned by the landlord and she sought the return as well as an amount equivalent to the deposits as the landlord did not comply with the requirements regarding security deposits under the Act.

The landlord testified that the tenant left a mess and damage in the rental unit. He testified that he attempted to meet with her and return \$1000.00 of the \$1700.00 in security and pet damage deposit but that the tenant refused to accept this amount. The landlord testified that the tenant and her co-tenant did not deserve the return of their deposits because they had three children and a dog who destroyed his property. He testified that he was required to clean extensively and paint before the sale of his property.

The landlord testified that he was not aware that he was required to file an application to retain the tenants' security or pet damage deposit. He testified that he believes that he has the right to retain the funds towards his loss. He testified that it cost him a great deal of money to call long distance from his holidays for this hearing.

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 on January 25, 2016 according to the undisputed sworn testimony of the tenant. The landlord had 15 days after January 25, 2016 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 neither she nor her co-tenant agreed to allow the landlord to retain any portion of the security or pet damage deposit. The landlord testified that the tenant declined to take a deduction of her deposits. 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 the deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security or pet damage deposit.

The tenants sought return of both the security and pet damage deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposits. Therefore, I find that the tenants are entitled to a monetary order including \$1700.00 for the return of the full amount of the security (\$850.00) and pet damage (\$850.00) 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 evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security or pet damage deposit in full within the required 15 days. The tenant gave sworn oral testimony that neither she nor her co-tenant have waived their 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 tenants are therefore entitled to a total monetary order amounting to double the value of their 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 tenants are 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 (\$850.00 + \$850.00= \$1700.00)	\$1700.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1700.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3500.00

The tenants are 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 17, 2016

Residential Tenancy Branch