



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF (Tenant's Application)
 MNR, MNDC, MNSD, FF (Landlord's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed on February 3, 2016, the Tenants sought a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application. In the Landlord's Application, filed on March 10, 2016, they sought a Monetary Order for damage to the rental unit, money owed or compensation for damage or loss under the *Residential Tenancy Act*, authority to retain the security deposit and recovery of the filing fee.

Only the Tenant, J.D., appeared at the hearing. He advised that he was authorized to present the Tenants' case and to appear as the agent for the other Tenant, J.M. J.D. gave affirmed testimony and was provided the opportunity to present the Tenants' evidence orally and in written and documentary form, and to make submissions to me.

As the Landlord failed to attend the hearing, their application filed March 10, 2016, is dismissed without leave to reapply.

The Tenants testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on February 4, 2016. The Tenants also provided the registered mail tracking number in evidence which is reproduced on the cover page of this my Decision.

Section 90 of the *Residential Tenancy Act* provides that documents served by registered mail are deemed served five days later, therefore I find the Landlord was served with the Tenants' Application for Dispute Resolution and Notice of Hearing as of February 9, 2016 and I proceeded with the hearing in the Landlord's absence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to return of double their security deposit?
2. Should the Tenants recover the filing fee paid for their Application?

Background and Evidence

J.D. testified as follows. He stated that tenancy began November 7, 2014 and that the Tenants paid the Landlord a security deposit of \$500.00 at the start of the tenancy. The Tenants vacated the premises on December 11, 2015.

The Tenants provided the Landlord with a written notice of their forwarding address by first informing the Landlord's representative on the telephone and then sending this information by email mail to the Landlord on December 20, 2015. A copy of this email was provided in evidence by the Tenants. J.D. confirmed that the Tenants did not sign over a portion of the security deposit.

The Tenant, J.D., testified that he attempted to arrange a time with the Landlord to complete the move out inspection, but this was not possible as the Landlord claimed to be unavailable. The Tenant further testified that when he could not arrange a time to inspect the unit with the Landlord he took photos of the unit to confirm its condition. Introduced in evidence were copies of the photos taken by the Tenants.

The Tenant J.D. also testified that the Landlord only returned \$171.25 of the \$500.00 security deposit.

The Tenants also sought recover of the \$100.00 filing fee.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

By failing to perform an outgoing condition inspection report in accordance with the *Act*, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to section 36(2) of the *Act*.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain

the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Although the Landlord filed an application to retain the security deposit they had already extinguished their right to claim against those funds; further, in failing to attend the hearing, their application is dismissed such that they have not satisfied section 38(1) of the *Residential Tenancy Act*.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$1,100.00**, comprised of double the security deposit paid (2 x \$500.00) and recovery of the \$100.00 fee paid for filing this Application.

I accept the Tenants' undisputed testimony that the Landlord has returned \$171.25 such that the sum of \$928.75 remains owing. Therefore, I grant the Tenants a Monetary Order in the amount of **\$928.75**. The Tenants must serve this Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenants are granted recovery of double the security deposit paid and the filing. As they have previously received \$171.25 from the Landlord, this amount is deducted from their total entitlement of \$1,100.00 such that they are granted monetary compensation in the amount of \$928.75.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: September 2, 2016

Residential Tenancy Branch