



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOARD OF EDUCATION SCHOOL DISTRICT #36 SURREY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agent KS (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or evidentiary materials. The landlord confirmed receipt of the tenant's application package. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective application and evidence.

Preliminary Issue – Adjournment

During the hearing the landlord made an application to have the hearing adjourned to a later date. The landlord testified that he has not had the opportunity to review the records regarding this tenancy and would require additional time to prepare. The landlord said that the property manager for the rental unit had recently resigned and he does not have personal information regarding the tenancy. The landlord did not give a reason why he had not reviewed the written records regarding this tenancy nor how much additional time he required to adequately review the records.

The tenant did not consent to an adjournment stating that it has already been several months since the tenancy ended.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure provides that the arbitrator may determine whether the circumstances warrant an adjournment of the hearing. The criteria for granting an adjournment are given in Rule 7.9 and include:

- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I find that the landlord was properly served with the tenant's application and had ample time to prepare for the hearing. I find that the landlord has not submitted sufficient evidence to show that their need for an adjournment arises out of unforeseen circumstances rather than their own intentional failure to prepare. I further find that an adjournment would be prejudicial to the tenant who has testified that she has been waiting for a return of the security deposit in order to pay other debts.

The request for an adjournment was not granted. The hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began on March 1, 2015 when the tenant moved into the current rental unit from another unit managed by the landlord. A new tenancy agreement was signed by the parties. The tenant authorized the landlord to transfer the security deposit that was being held for the previous tenancy to the current tenancy. The monthly rent was \$1,200.00 payable on the first of each month.

The landlord testified that no condition inspection was performed and no report was completed at the start of the tenancy. The landlord testified the amount that was transferred from the previous tenancy and provided as a security deposit was \$718.27. The written tenancy agreement submitted into evidence by the tenant indicates a security deposit of \$800.00 was paid. The landlord could not provide an explanation for the discrepancy.

The tenant testified that she understood the security deposit to be \$800.00 and believed it was transferred in full from the previous tenancy. The tenant testified that this tenancy ended on October 4, 2016. The tenant testified that she verbally provided a forwarding address to the landlord's building manager at that time. The tenant said that she did not consent in writing that the landlord may keep the security deposit. She said that she continued to request that the security deposit be returned and met with a representative of the landlord on January 6, 2017 and provided her forwarding address in writing. The landlord confirmed receipt of the tenant's forwarding address on that date.

The landlord testified that the full amount of the security deposit that their records showed, \$718.27 was mailed to the tenant at her forwarding address on January 27, 2017. The tenant confirmed receipt of the cheque but disputes that it represents the full amount of her security deposit.

Analysis

The parties disagree on the amount of the security deposit. The tenant relies upon the written tenancy agreement which states that security deposit for this tenancy is \$800.00. The landlord testified that their records indicate that \$718.27 was the amount transferred from the previous tenancy. I find that the security deposit is \$800.00 as stated on the tenancy agreement signed by the parties. If the landlord did not receive the full amount of the security deposit at the start of the tenancy it was the landlord's responsibility to correct the tenancy agreement or inform the tenant.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address on January 6, 2017. I accept the evidence of the parties that the landlord provided a cheque in the amount of \$718.27 on January 27, 2017. I find that the landlord failed to return the security deposit to the tenant within 15 days of January 6, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period. If the landlord had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenant's forwarding address or within 15 days of the end of tenancy.

The landlord submitted evidence of the rental unit's condition and unpaid rent during the tenancy. All of this evidence is irrelevant to the issue of the return of the security deposit.

It is inconsequential if repairs to the rental unit were required, if the landlord does not take proper action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss or delay in returning the deposit because of discrepancies in their records.

In addition, the parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
...
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that she has not waived the right to obtain a payment pursuant to section 38 of the *Act* 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 entitled to a \$1,600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in her application, she is entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$981.73 against the landlord in the following terms:

Item	Amount
Return of Pet Damage Deposit	\$800.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$800.00
Recovery of Filing Fee for this Application	\$100.00
Less Amount Returned Jan 27, 2017	-\$718.27
Total Monetary Order	\$981.73

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: March 14, 2017

Residential Tenancy Branch