



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement (with respect to the return of the security deposit) pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties (2 tenants and 1 landlord) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution package including the Notice for Hearing. Based on the testimony of the parties, and pursuant to section 88 and 89 of the *Act*, I find that the landlord has been sufficiently served the tenants' dispute resolution hearing package.

Issue(s) to be Decided

Are the tenants entitled to a return of all or a portion of their security deposit?
Are the tenants entitled to an amount equivalent to their security deposit 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 August 1, 2015 for a fixed term of one year. The rental amount of \$1200.00 was payable on the first day of each month. The tenants provided undisputed evidence that a security deposit of \$600.00 was paid a month prior to the outset of the tenancy. The tenants sought to recover their security deposit.

Both tenants vacated the rental unit on July 27, 2016. Tenant RJ testified that she provided her forwarding address to the landlord on July 23, 2016, prior to vacating the rental unit. Tenant SE testified that she provided her forwarding address to the landlord on August 27, 2016. The landlord, who lives in another province, verified receipt of both forwarding addresses. Both parties agreed that no condition inspection reports were created at the start or end of this tenancy.

The landlord testified that when she received a forwarding address from Tenant RJ, she thought she should wait until she had both tenants' forwarding addresses before returning their security deposit. The landlord also testified that she attempted to contact the tenants to advise them that she wanted to deduct monies from their security deposit for damages to the unit, particularly damage to a table in the rental unit. Both parties provided evidence that they were in regular email contact with each other. The tenants denied that any damage was done to the unit beyond normal wear and tear. The tenants indicated that they left holes in the walls from hanging pictures in the unit.

The landlord testified that she did not make a dispute resolution application of her own but that she had provided a monetary worksheet with her response to the tenants' application. The landlord testified that she continued to withhold the tenants' security deposit because they would not agree to \$60.00 in deductions for picture holes in the walls and \$300.00 towards the cost of a new kitchen table in the rental unit.

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 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 deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security 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 one tenant's forwarding address by July 27, 2016 by mail and the second tenant's by mail on August 27, 2016. The landlord had 15 days after July 27, 2016 to either return the security deposit to the tenant whose address she had received or to file for dispute resolution, claiming all or a portion of the tenants' security deposit. I note that, even if the triggering event was the provision of the second tenant's security deposit (August 27, 2016), the landlord took no action within 15 days of receipt of the second address.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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 tenants both testified that they did not agree to allow the landlord to retain any portion of their security deposit. Both parties agree that there was some email communication in an attempt to make an agreement for the landlord to retain a small portion. However, there is no evidence that either tenant ultimately gave the landlord written authorization at the end of this tenancy to retain any portion of the security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants seek return of their \$600.00 security deposit. The landlord testified that there was damage beyond wear and tear. The landlord submitted a photograph of a table at the end of the tenancy but no photograph of the table at the outset of the tenancy. The landlord did not conduct a condition inspection with a report at the end or the outset of the tenancy. In fact, the landlord testified that her knowledge of damage to the unit is based on the report of the new tenant; she has not seen the rental unit or its furniture for over one year. The landlord testified that she did not make a dispute resolution application of her own but that she had provided a monetary worksheet with her response to the tenants' application. The landlord believed that providing the monetary worksheet was sufficient to seek a monetary order against the tenants.

The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposit. I find the landlord was sufficiently notified of the tenants' forwarding address in accordance with the Act. Given that the landlord did not apply or return the tenants' security deposit, I find that the tenants are entitled to a monetary order including \$600.00 for the return of the full amount of their security deposit.

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 deposit in full within the required 15 days. The tenants both gave sworn oral testimony that they have not 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 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 tenants as follows:

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1300.00

The tenants are provided with formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order 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: March 13, 2017

Residential Tenancy Branch