



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

Pursuant to the *Residential Tenancy Act* ("the Act"), the tenant applied for authorization to obtain the return 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.

Both parties (a representative for the tenant and the 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 tenant's Application for Dispute Resolution and Notice of Hearing.

Issue(s) to be Decided

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

Is the tenant entitled to an amount equal to her security deposit as a result of the landlord's failure to comply with the Act?

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

Background and Evidence

This tenancy began on August 15, 2015 as an 11.5 month fixed term with a rental amount of \$1100.00 payable each month. The landlord testified that, prior to the end of the fixed term tenancy, the tenant vacated the rental unit. The landlord also testified that, prior to the end of the fixed term tenancy, the landlord issued the tenant a 2 Month Notice to End Tenancy. The tenant wrote in her submissions for this application and her representative stated at the hearing that the tenant relied on the 2 Month Notice to End Tenancy, moving out 1 month prior to the original expiry date of the tenancy and, subject 51 of the Act, withholding her final months' rent.

Both parties agreed that the tenant vacated the rental unit on June 30, 2016. The tenant submitted a copy of the tenancy agreement as documentary evidence at this hearing. The agreement showed that the tenant provided a security deposit of \$550.00 at the outset of the tenancy. The landlord confirmed that he continues to hold the tenant's

security deposit. The landlord confirmed that he received the tenant's forwarding address by August 4, 2016. The landlord testified that he was not aware he was required to apply to retain the tenant's security deposit. He testified that, because the tenant had not paid July 2016 rent, he believed he was entitled to retain the deposit. The tenant's representative testified that he and the tenant had both advised the landlord of the appropriate sections of the *Residential Tenancy Act* to consider in these matters.

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 deposit, 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 the forwarding address by the tenant in writing and again by text message by August 4, 2016. The landlord had 15 days after August 4, 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 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's representative testified that the tenant did not agree to allow the landlord to retain any portion of her security deposit. As there is no evidence from either party that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of her security deposit. The landlord did not apply to the Residential Tenancy Branch although he did attend the hearing in support of his position. In the circumstances, I find that the tenant is entitled to a monetary order including \$550.00 for the return of the full amount of her 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 tenant's security deposit in full within the required 15 days. The tenant's representative testified that the tenant had 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 deposit 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 Security Deposits	\$550.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	550.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1200.00

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: March 27, 2017

Residential Tenancy Branch