



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- a return of her Security and Pet deposit pursuant to section 38 of the *Act*.

The tenant and agent for the landlord, V.B. attended the hearing. Both parties were given full opportunity to be heard, to present their sworn testimony and to make submissions and present evidence under oath.

V.B. confirmed that the landlords’ received a copy of the tenant’s application for dispute resolution package by hand. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenant’s application for dispute resolution.

Issue(s) to be Decided

Is the tenant entitled to a return of her security and pet deposit?

If so, should these amounts be doubled?

Background and Evidence

The tenant testified that rent for the unit was \$875.00 and deposits of \$437.50 (security) and \$220.00 (pet) were paid to the landlords at the outset of the tenancy. V.B. acknowledged that the landlords retained these amounts for repairs that were needed in the unit following the conclusion of the tenancy.

On February 4, 2016, the landlords were awarded a 2 Day Order of Possession by another arbitrator appointed under the *Act*, at which point the tenant vacated the rental unit. The landlords were ordered to “deduct **\$50.00** from the security deposit,

representing recovery of the cost of the filing fee. The remainder of the security deposit was to be addressed in accordance with the provisions of the Act.”

Following the conclusion of this tenancy, no condition inspection report was completed by the landlords with the tenant. V.B. testified that the security and pet deposits were put towards the cost of replacing the carpet, as well as cleaning the ceiling where the tenant had written graffiti. In addition, V.B. explained that the tenant did not pay rent from September 2015 to February 2016 and that this money was put towards the rent that remained unpaid.

In a dispute resolution hearing dated February 4, 2016 an arbitrator with the *Residential Tenancy Branch* found that, “The Tenant paid only \$350.00 in rent for December, 2015, and did not pay any rent when it was due on January 1, 2016. The Landlord issued a 10 Day Notice for Unpaid Rent on January 19, 2016. The Tenant has not paid any rent for February, 2016. However, the Landlord seeks an Order of Possession based on the 2 Month Notice to End Tenancy.”

The tenant provided photographic evidence at the hearing demonstrating that the landlords were in receipt of her forwarding address on January 12, 2017.

Analysis – Return of Security and Pet Damage Deposits

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. One of these actions must occur within 15 days after the *later* of either the end of the tenancy or upon receipt of the tenant’s 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. 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), or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy pursuant to section 38(3)(b).

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenant’s forwarding address on January 12, 2017 or following the conclusion of the tenancy. If the landlords had concerns arising from damage to the rental unit following the conclusion of this tenancy, the landlords 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. Furthermore, in the decision of February 4, 2016 the landlords were instructed that *the remainder of the security deposit must be applied in accordance with the provisions of the Act*.

Pursuant to section 38(6)(b) of the *Act*, the landlords are required to return the pet damage and security deposit, less the \$50.00 amount awarded the landlord. I am making a Monetary Order in the tenant's favour in the amount of \$1,215.00 for this item. This amount reflects double the security deposit (less \$50.00 as per the February 4, 2016 decision) and pet deposit.

Conclusion

I am making a Monetary Order of \$1,215.00 in favour of the tenant as follows:

Item	Amount
Return of Remaining Portion of Security Deposit (2 x \$387.50)	\$775.00
Return of Pet Damage Deposit (2 x \$220.00)	440.00
Total Monetary Award	\$1,215.00

The tenant is provided with formal Orders in the above terms. Should the landlord 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: April 3, 2017

Residential Tenancy Branch