



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of their security deposit; a monetary order equal to the amount of the security deposit for the landlord's failure to comply with section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties (2 tenants, a landlord and a landlord's witness) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The tenant noted for the record that the landlord referred to a video in her materials. The landlord stated that she was not relying on any video for this hearing. Therefore, the matter of this video evidence was resolved by the parties as unnecessary for this matter.

Issue(s) to be Decided

Are the tenants entitled to the return 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 and was a month to month tenancy with a rental amount of \$1400.00 payable on the first of each month. The landlord confirmed that she continues to hold the tenants' \$700.00 security deposit paid at the outset of this tenancy. The tenants testified that they vacated the rental unit on August 31, 2016 after giving 1 months' notice in writing to the landlord. The tenants provided undisputed

evidence that they provided the landlord with their forwarding address on September 1, 2016. The tenants both provided sworn, undisputed testimony that, as of the date of this hearing, their security deposit had not been returned.

The landlord testified that she had not returned the tenants' security deposit. She testified that, at the end of tenancy, her new tenant complained of damage to the rental unit and she ultimately reimbursed the new tenant for repairs made at the rental unit. The landlord testified that she was not aware that she had to submit an application to retain the tenant's security deposit. She testified that she was holding the deposit until she got receipts to verify the total amount owed by the tenants.

Both the landlord and the landlord's witness confirmed that neither tenant agreed to the retention of their security deposit. The landlord's witness testified that, at the rental unit, after the tenants had vacated the rental unit, she took photographs of the state of the unit. The photographs were submitted as evidence for this hearing by the landlord. All parties including the landlord, the landlord's witness and both tenants testified that no condition inspection was done at move in or move out and so there were no condition inspection reports created for this tenancy.

Analysis

In this circumstance, the landlord testified that she was not aware of her obligations at the end of tenancy; that she should conduct a condition inspection at the start and end of tenancy and that she has limited time to apply to retain the security deposit. Ignorance of the law does not provide a satisfactory defence. It is the obligation of the landlord to be aware of the standards and requirements of the *Residential Tenancy Act*.

Section 38 of the Act addresses the obligations of landlords and tenants with respect to security deposits. 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 tenants' forwarding address by regular mail and by email

on August 31, 2016. Taking into account the time for service of regular mail, the landlord had 15 days after September 5, 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 tenants both testified that they did not agree to allow the landlord to retain any portion of their security deposit. Any agreement to retain a deposit can be demonstrated with a condition inspection report. As there is no evidence that the tenants gave the landlord written authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants’ security deposit.

The tenants seek the return of their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenants’ deposits. The landlord attending this hearing and confirmed receipt of both the tenants’ Application for Dispute Resolution as well as the tenants’ provision of forwarding address. Given that the landlord was aware of the tenants’ application and also made aware of the tenants’ forwarding address but made no application to retain the deposit, I find that the tenants are entitled to a monetary order including \$700.00 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 undisputed evidence of the tenants 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 monetary order including an amount equal to their 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 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	\$700.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	700.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1500.00

The tenants are provided with a formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order may be filed and enforced as an Order 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 03, 2017

Residential Tenancy Branch