



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

Pursuant to the *Residential Tenancy Act* ("the Act"), the tenants applied for the return of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties 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 as well as her secondary evidence packages submitted for this hearing. The landlord also confirmed receipt of the tenant's amendment to her application increasing the amount she sought to recover from the landlord. The tenant confirmed receipt of the materials submitted as evidence by the landlord including photographs and invoices.

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 deposit for the landlord's contravention of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began on May 1, 2015 with a monthly rental amount of \$1100.00. The tenants provided notice to end the tenancy on January 31, 2017. Both parties agreed that, on that date, the tenants also provided their forwarding address. The tenancy ended on February 18, 2017 when the tenants vacated their rental unit. Both parties agree that the landlord continues to hold the \$550.00 security deposit paid prior to the start of the tenancy (April 2015). The tenants sought to have the security deposit returned to them as well as to be compensated for the landlords' failure to return the deposit in accordance with the Act.

The landlord submitted evidence with respect to this tenancy including photographs to show that the tenant left the rental unit in poor repair. The landlord submitted that the tenant left broken light bulbs, a significant number of holes in the wall, and left 2 large loads of garbage behind. The landlord said substantial repair and cleaning was required after the tenants vacated the rental unit.

The tenant testified that she hired cleaners at the end of the tenancy that the unit was clean and tidy. The landlord testified that he did not make an application to the Residential Tenancy Branch to retain the tenants' security deposit. He testified that he is a new landlord and he did not realize his obligations with respect to the security deposit.

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 landlords 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 security deposit plus any applicable interest and must pay the tenants 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 tenants' provision of the forwarding address. In this case, the landlords were informed of the forwarding address in writing, with the notice to end tenancy, on January 31, 2017. The tenants vacated the rental unit on February 18, 2017. The landlords had 15 days after February 18, 2017 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." This can be done in a variety of forms but a condition inspection report is good evidence of an agreement to retain the deposit. In this case, the tenant provided undisputed testimony that neither she nor her co-tenant agreed to allow the landlords to retain any portion of their security deposit. As there is no evidence that the tenants gave the landlords written authorization at the end of this tenancy to retain any portion of their deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants sought return of their security deposit. The landlords did not apply to retain any or all of the security deposit. The landlord provided evidence of damage to the rental unit for this hearing. Given that the landlord has not made an application to retain the security deposit and the landlord has not, at this time, made an application for his own monetary order for damage to the rental unit, I find that the tenants are entitled to a monetary order including \$550.00 for the return of the full amount of their security deposits.

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 landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenant's evidence is that neither of the tenants waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' 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 deposit** (total of \$1100.00) with any interest calculated on the original amount only. No interest is payable for this period.

The tenant included a request to recover her cleaning costs at the end of this tenancy. I dismiss the tenants' application to recover the cleaning costs as it is her obligation under the *Act* to clean the unit at the end of the tenancy. I also dismiss the tenants' request to recover the costs of serving the landlord via registered mail. The landlord is not responsible for the cost of delivery of items to the landlord nor is he responsible to

pay the cost of the tenants' obligatory clean of the rental unit at the end of the tenancy. However, as the tenants were successful in their application to recover their security deposit, I find that they are entitled to recover the filing fee for their application.

Conclusion

I dismiss the tenants' application for cleaning and registered mail costs.

I issue a monetary Order in favour of the tenants as follows:

Item	Amount
Return of Security Deposit	\$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 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: May 11, 2017

Residential Tenancy Branch