



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and for “other”. During the hearing the Tenant withdrew all of her claims except the application for double the security deposit.

The Advocate for the Tenant stated that this Application for Dispute Resolution and this Notice of Hearing were sent to the Landlords, via registered mail, although she does not know the date of service. The Landlords acknowledged receipt of these documents.

On December 12, 2016 the Tenant submitted 14 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was served to the Landlord, via registered mail, although she does not know the date of service. The female Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 02, 2017 the Landlord submitted 20 pages of evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was faxed to the Tenant’s advocate on June 02, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

Both parties indicated that they were ready to proceed with the hearing, without the need for an adjournment to consider evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The Landlords believed that damages to the rental unit would be considered at these proceedings. The parties were advised that the only issues to be considered at these proceedings were the issues outlined on the Tenant's Application for Dispute Resolution. The Landlords were advised that they have the right to file an Application for Dispute Resolution for damages to the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence:

The Tenant stated that that this tenancy began on April 01, 2015 and the female Landlord stated that it began on March 01, 2015.

The Landlords and the Tenant agreed that:

- a security deposit of \$625.00 was paid;
- a pet damage deposit of \$625.00 was paid;
- this tenancy ended on October 01, 2016;
- the parties met a few days after the tenancy began to inspect the rental unit but a condition inspection report was never completed;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The female Landlord stated that the Landlords previously filed an Application for Dispute Resolution seeking to retain the Tenant's security deposit and pet damage deposit; although at the time of the hearing she could not recall when that Application was filed. The file number for the Landlords' Application for Dispute Resolution appears on the first page of this decision.

Residential Tenancy Branch records show that on September 16, 2016 the Landlords' filed an Application for Dispute Resolution in which the Landlords applied to retain the Tenant's security deposit and pet damage deposit in compensation for lost revenue.

The Landlords and the Tenant agree that a hearing was convened on November 08, 2016 to consider the merits of the Landlord's Application for Dispute Resolution. A copy of that decision was submitted in evidence. In the decision that Arbitrator dismissed the Landlord's application to retain the Tenant's security/pet damage deposit and she ordered the Landlords to return those deposits to the Tenant, although she did not issue a monetary Order.

The female Landlord stated that she did not comply with the Arbitrator's order to return the security/pet damage deposits because she planned to appeal that decision, which she has not done.

The Advocate for the Tenant stated that a previous advocate for the Tenant mailed the Tenant's forwarding address to the Landlords on October 03, 2016. The female Landlord acknowledged receiving this address a few days after October 03, 2016.

The Tenant stated that she left her forwarding address, in writing, on the kitchen counter on October 01, 2016. The female Landlord stated that a forwarding address for the Tenant was not located in the rental unit.

The Tenant stated that on October 01, 2016 her forwarding address was left on the gate to the Landlords' property when she served the Landlords with the Application for Dispute Resolution. The Tenant stated that when she was referring to service of the Application for Dispute Resolution she was referring to the Application filed by the Landlord on September 15, 2016. The Tenant was unable to clarify why she would be serving an Application for Dispute Resolution that was filed by the Landlords.

The Tenant stated that on October 01, 2016 her forwarding address was left on the gate to the Landlords' property by a third party.

The Tenant stated that on October 26, 2016 her forwarding address was left on the gate to the Landlords' property by a moving company who served documents on her behalf.

The female Landlord stated that a forwarding address for the Tenant was never located on the gate to the Landlords' property. She stated that until the Tenant served her with this Application for Dispute Resolution the only forwarding address ever received from the Tenant was in the letter that was mailed on October 03, 2016.

The Advocate for the Tenant argued that the security deposit and pet damage deposit should be doubled, pursuant to section 38(6) of the *Act*, in part, because the Landlords did not apply for the return of the security/pet damage deposit after the tenancy ended. She stated that the Landlords' Application for Dispute Resolution in which they applied to retain the security/pet damage deposit is date-stamped September 16, 2016 does not comply with section 38(1) of the *Act* because the tenancy had not yet ended on that date.

The Advocate for the Tenant argued that the security deposit and pet damage deposit should be doubled, in part, because the Landlords did not complete condition inspection reports, as is required by sections 23 and 35 of the *Act*.

Analysis:

On the basis of the undisputed evidence I find that this tenancy was the subject of a previous dispute resolution proceeding and that a Residential Tenancy Branch Arbitrator ordered the Landlords to return the security deposit and pet damage deposit to the Tenant. As the Landlords have not yet complied with that order I find it necessary to grant the Tenant a monetary Order for \$1,250.00, which represents a full refund of the security deposit and pet damage deposit.

On the basis of the undisputed evidence I find that this tenancy ended on October 01, 2016.

On the basis of the undisputed evidence I find that the Landlords received the Tenant's forwarding address that was mailed to the Landlords on October 03, 2016.

As I am satisfied that the Landlord received the Tenant's forwarding address, by mail, in October of 2016, I find it is not necessary to determine whether the Tenant also provided her forwarding address by leaving it in the rental unit or by posting it on the gate to the Landlord's property.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

Residential Tenancy Branch records show that the Landlords filed an Application for Dispute Resolution on September 16, 2016, in which they applied to retain the Tenant's security/pet damage deposit in compensation for lost revenue. There is nothing in the *Act* that prevents a landlord from applying to retain a portion of the security deposit or pet damage deposit prior to the end of the tenancy.

As the Landlords had already filed an Application for Dispute Resolution to retain the Tenant's security/pet damage prior to the end of the tenancy and a hearing had been scheduled for November 08, 2016 to consider that claim, I find it illogical to conclude that the *Act* would require the Landlords to file a second claim against the deposits. Rather, I find it would have been entirely inappropriate for the Landlords to file a second application to retain the security/pet damage in compensation for lost revenue. I therefore find that the Landlords complied with section 38(1) of the *Act* when they filed their Application for Dispute Resolution on September 16, 2016.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords complied with section 38(1) of the *Act*, I cannot conclude that the Tenant is entitled to double the security deposit pursuant to section 38(6) of the *Act*.

Section 23 of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy. Section 35 of the *Act* requires a landlord to complete a condition inspection report at the end of the tenancy.

Section 24 of the *Act* stipulates that a landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with various requirements of section 23 of the *Act*, including completing a condition inspection report. Section 36 of the *Act* stipulates that a landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with various requirements of section 35 of the *Act*, including completing a condition inspection report.

Although sections 24 and 36 of the *Act* extinguish a landlord's right to claim against the security deposit or pet damage deposit for damage to residential property, they do not extinguish a landlord's right to claim for other amounts owed, such as unpaid rent or lost revenue. As the Landlords initial claim to retain the security deposit was for lost revenue, I find that I do not need to determine whether their right to claim against the deposits was extinguished.

Conclusion:

The Tenant has established a monetary claim of \$1250.00, which represents a full refund of her security deposit and pet damage deposit and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 09, 2017

Residential Tenancy Branch