



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenants for loss of rent, and damage to the rental unit, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on October 23, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for loss of rent?
2. What should happen to the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows; the tenancy began June 1, 2016; monthly rent was payable in the amount of \$1,200.00; and, the Tenants paid a security deposit in the amount of \$600.00. The Tenants moved out February 28, 2017.

The Landlords sought compensation for two months' rent. She stated that the Tenants initially text messaged her to say that they would be moving out at the end of April 2017 and then after this they sent a text message indicating they would move out at the end of February. Introduced in evidence were copies of these text messages.

The Landlord claimed she was only able to re-rent the rental unit as of May 1, 2017. She stated that she tried to rent the rental unit as soon as possible and posted the rental unit on a popular buy and sell website in the community in which the rental unit is located. She confirmed that she posted the first add on March 23, 2017 claiming that she was not able to advertise sooner as she had to fix wall damage and paint the rental unit. She further stated that she showed the rental unit to her new tenant on February 4, 2017 although the new tenant was not able to move until May 1, 2017.

On the application for dispute resolution, the Landlord also claimed the Tenants did not participate in the move out condition inspection. During the hearing the Landlord stated that she completed the proper move out condition inspection form on February 28, 2017 and although the Tenants were there they refused to sign the report.

In response to the Landlord's claims, the Tenant, T.C. testified as follows. She stated that although the Landlord provided a move out condition inspection report in their evidence, that document was never shown to them at the time of the inspection, nor was it completed during the inspection as claimed by the Landlord. She further stated that the Landlord simply asked the Tenants to agree that the Landlord could retain a portion of the deposit. T.C. confirmed that they refused at which time she says that the Landlord's husband began yelling at them and told them that they were trespassing.

T.C. confirmed that they left the rental unit and then returned with the keys and a note providing their forwarding address. She stated that she wrote their forwarding address on a piece of paper and left the paper at the house with the keys. She further said that the Landlord was there at the time as that was when they signed the document confirming they received \$320.00.

T.C. further stated that they signed another document which confirmed that they received part of the deposit back (\$320.00). She further stated that they agreed the Landlord could retain \$100.00 towards the electrical utility as well as \$20.00 for cleaning, such that they expected to receive \$480.00.

T.C. stated that they did not agree to the Landlord's request for the cost of repairing the walls. She further stated that the Landlord refused her request to do the repairs and painting themselves as the Landlord claimed the wall colour would not match and stated that she required "professional painters" to do the work.

T.C. confirmed that the Tenants dispute the Landlord's claim for loss of rent. She testified that they gave the Landlord one month's notice such that the Landlord should have been able to re-rent the unit as of the end of the tenancy. T.C. stated that they provided their notice via text message (which was introduced in evidence) and she knew that the text message was insufficient as she had read this information on the residential tenancy branch website. She confirmed that after sending the Landlord the text message, she then wrote her written notice on a "cue card" wherein she included all the information that was required.

The Tenant confirmed that they have an application for dispute resolution to be heard March 20, 2017 wherein they are seeking return of double their security deposit due to the fact the Landlord did not complete the inspection as required, and did not apply for dispute resolution within 15 days of receipt of their forwarding address in writing.

In reply, the Landlord confirmed that she received the Tenants' forwarding address on February 28, 2017. The Landlord stated that she believed the issue of the security deposit was dealt with as the Tenant agreed she could retain a portion of the deposit towards the damage.

Analysis

After consideration of the evidence before me, and on a balance of probabilities I find as follows.

I find the Tenants gave notice to end their tenancy effective February 28, 2017. I accept the Tenants' evidence that they gave their notice to the Landlord both by text message as well as in writing. As such, they ended their tenancy effective February 28, 2017.

The Landlord seeks compensation in the form of two months' rent from the Tenants. She claimed she attempted to re-rent the rental unit but was prevented from advertising until late March 2017 because she had to repair a wall and paint. The photos submitted by the Landlord do not show damage over and above reasonable wear and tear. Further, she failed to provide any support for her claim that it took her a month to ready the unit for occupation. In all the circumstances, I find she has submitted insufficient evidence to support her claim that she could not rent the rental unit until May of 2017. Consequently, I dismiss her claim for two month's rent.

For these reasons I also dismiss the Landlord's claim for the cost to repair and paint the rental unit. Notably, the Landlord made no mention of these amounts when filing her application on May 10, 2017.

The Landlord initially alleged (on her Application for Dispute Resolution) the Tenants did not participate in the move out inspection, yet testified they did, although refused to sign the report. The Tenants allege the Landlord did not have the form with her at the time of the inspection.

I accept the Tenants' evidence that the Landlord did not complete the move out inspection form at the time of the inspection and therefore did not perform the move out condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*. Both parties testified as to the considerable discussion regarding the Tenants' security deposit and deductions thereto. I find it likely that had the form been present during the inspection that either, or both of the parties would have recorded some of the amounts discussed in terms of the deductions. Further, as the Tenants had a forwarding address at that time, I find it likely they would have recorded their address on the form had it been available to them.

The Landlord is in the business of renting and must abide by the *Residential Tenancy Act* and *Regulations*. In failing to complete the move out inspection as required, she has not complied and therefore has extinguished her right to claim against the deposit.

I therefore dismiss the Landlord's claim in its entirety. Having been unsuccessful, I also dismiss the Landlord's request for recovery of the filing fee.

The Landlord holds the Tenants' security deposit in trust. Consequently, the only parties with a claim to those funds are the Landlord and the Tenants. The Tenants are therefore entitled to its return.

Based on the evidence before me, I find the Landlord breached section 38 of the *Residential Tenancy Act*, which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord testified that she received the Tenants' forwarding address on February 28, 2017. As such, and pursuant to section 38(1) of the *Act*, she had 15 days from that date in which to make her application for dispute resolution. The Landlord applied on May 10, 2017.

Having failed to apply within the strict time limit imposed by section 38, I must Order that the Landlord pay the Tenants double their security deposit.

The evidence indicates the Tenants paid a \$600.00 deposit.

I accept the Tenants' evidence that they agreed the Landlord could retain \$100.00 towards the electrical utility as well as \$20.00 for cleaning.

Residential Tenancy Policy Guideline 17—Security Deposit and Set Off provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- **Example A:** A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

- **Example B:** A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

- **Example C:** A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

Note: Interest is not included in the examples above, for the sake of simplicity. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

The case before me most closely resembles **Example C** above, as the Tenants agreed the Landlord could retain \$120.00, yet the Landlord retained an additional \$160.00. Applying the above, the Tenants are entitled to the sum of **\$640.00** calculated as follows:

\$600.00	amount of security deposit
- <u>\$120.00</u>	amount agreed to by Tenants
= \$480.00	
x <u>2</u>	doubled as per section 38 of the <i>RTA</i>
= \$960.00	
- <u>\$320.00</u>	amount returned to Tenants
\$640.00	owing to Tenants

Conclusion

The Landlord's claim is dismissed.

The Tenants are entitled to return of double their security deposit calculated in accordance with section 38 of the *Act*, and *Residential Tenancy Policy Guideline 17*.

I grant the Tenants a Monetary Order in the amount of **\$640.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: November 22, 2017

Residential Tenancy Branch