



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MND, MNDC, MNR, MNSD, FF

Tenant: MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties for Monetary Orders respecting the security deposit of the tenancy. Additionally the landlord original sought compensation for damage and loss. The applications are inclusive of requests for recovery of the filing fee.

The tenant's application was filed one day later than required to cross their application with the landlord's and therefore received a hearing date in June 2018. The tenant made a request for their application to be crossed in this hearing with which the landlord consented. On the basis that the two applications were mutually related and relevant, and the parties agreed they be crossed, I accepted the tenant's request.

Both tenants and the landlord attended the hearing. The parties acknowledged receiving the application of the other and exchanging their respective evidence. The parties were also provided opportunity to present any relevant evidence in testimony. The hearing proceeded on the merits of the relevant evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence of the parties before me is as follows.

The tenancy began July 15, 2014. Rent was \$1350.00 payable in advance on the 1st of every month. The landlord collected a security deposit at the outset of the tenancy which they retain in trust. The tenants testified they vacated May 28, 2017, however the parties' testimony and the tenant's document evidence agreed the tenancy ended May 30, 2017 on which date the tenant returned the keys. The parties agreed that they mutually conducted a *move in* inspection at the outset of the tenancy and both attended the *move out* inspection on May 30, 2017. The landlord provided an incomplete condition inspection report (CIR) containing particulars for the *move in* but not the *move out* portion of the report. The landlord testified that despite the parties attending the move out inspection on May 30, 2017 they did not agree on matters and therefore the CIR remained incomplete and unsigned by the parties, with the further result that the parties did not agree as to the administration of the deposit. The CIR contains the tenant's written forwarding address which the parties agreed was in the landlord's possession on the agreed last day of the tenancy of May 30, 2017. The tenant acknowledged they wrote their forwarding address community as Shawnigan Lake, mirroring the dispute address, rather than their actual nearby community of Cobble Hill, but none the less provided the valid postal code for their forwarding address.

The landlord applied to retain the deposit of the tenancy on June 15, 2017 in satisfaction of certain deficiencies at the end of the tenancy. The landlord testified that when they applied their claim was relevant in respect to the deficiencies claimed, but that soon after matters resolved themselves. The landlord recently submitted a revised monetary order worksheet solely claiming their mailing and printing costs to advance their claim/application, and the filing fee.

The tenant applied for the return of their security deposit and to recover their filing fee.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the relevant evidence for this matter, I find as follows.

I find the landlord's monetary claim for mailing and printing costs is for such discretionary costs associated to advance their claim against the tenant which effectively are litigation costs. All parties are each responsible for their own such costs, and therefore not compensable. As a result I must dismiss this portion of the landlord's claim with the result that the landlord's claim in its entirety is dismissed.

I find that the tenant's right to the return of their security deposit have not been extinguished.

I accept that the tenant provided the valid postal code for their forwarding address despite them providing the incorrect name for their forwarding address community. However, given the landlord did not rely on the address I find it is not material in this matter.

I find that according to the parties agreed evidence and pursuant to **Section 44(1)(d)** of the Act, the tenancy ended no later than May 30, 2017 and the landlord was in possession of the tenant's forwarding address on the same date.

Section 38(1) of the Act provides as follows,

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days after the end of the tenancy or receiving the tenant's forwarding address in writing on May 30, 2017 and is therefore liable under **Section 38(6)** which states:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Policy Guideline 17- Security Deposit and set off, in part relevant to this matter states as follows.

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

2. Where the tenant applies for return of the security deposit and the landlord later applies for dispute resolution for claims arising out of the tenancy and the hearings are not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.

3. 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 dispute resolution 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.

As a result of all of the above, I find that the landlord currently holds a security deposit of \$650.00 and was obligated to administer this amount pursuant to Section 38 by June 14, 2017. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1300.00 and is further entitled to recover their \$100.00 filing fee for a total entitlement of **\$1400.00**.

Conclusion

The landlord's application is dismissed.

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1400.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: December 05, 2017

Residential Tenancy Branch