



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 592482 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants requested return of double the pet damage deposit paid and recovery of the filing fee.

The hearing was scheduled for teleconference at 3:00 p.m. on this date. The Tenant, L.A., called into the hearing as did the Landlord and her spouse P.G. The parties 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 *Residential Tenancy Branch 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.

Caution

During the hearing the Landlord's husband, P.G., yelled out and interrupted when others were testifying. I warned P.G. that the hearing was a legal proceeding and that he was not to interrupt. On the second occasion I suggested that he mute the line, or leave the room if he was unable to control his outbursts.

When it was time for the Landlord to testify, I could hear P.G. whispering to her and otherwise coaching her testimony. I informed P.G. that he was not affirmed and that he was not to interrupt the proceedings or coach the Landlord's testimony. I informed him that such behaviour was not appropriate and again invited him to leave the room to avoid interrupting the hearing.

Eventually the Landlord forcefully asked P.G. to leave the room. As he was leaving the room P.G. exclaimed "I was a lawyer for 40 years, this is not the end of this".

After P.G. removed himself from the hearing, the Landlord was able to complete her testimony without further interruption.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?
2. Should the Tenants recover the filing fee?

Background and Evidence

In support of her claim the Tenant, A.L., testified as follows. The tenancy originally began as a one year fixed term tenancy beginning November 1, 2011 and ending on October 31, 2012. The Tenant and her husband (the other named Tenant on the residential tenancy agreement) remained in the rental unit following the end of the fixed term on October 31, 2012 on a month to month basis until September 30, 2015 when the tenancy ended.

The Tenant claimed that when she moved into the rental unit the Landlord was traveling and did not do a move in condition inspection report. She also stated that when she vacated the rental unit the Landlord also did not do a move out condition inspection report in accordance with the *Residential Tenancy Act*, and the *Regulations*.

The Tenant stated that she paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$225.00 for a total of \$900.00.

The Tenant further stated that she sent the Landlord a registered letter on August 14, 2016 with her forwarding address. In response to this letter the Landlord wrote that the Tenant was not a Tenant and therefore had "no standing" (a copy of the Landlord's response was provided in evidence before me).

The Tenant testified that she applied for Dispute Resolution on September 7, 2017.

In response to the Tenant's claims the Landlord testified as follows. She stated that the tenancy ended on September 30, 2015.

The Landlord confirmed that she did not do a move in condition inspection or move out condition inspection report in accordance with the *Residential Tenancy Act* and *Regulations*.

The Landlord further confirmed that she received the Tenant's forwarding address in writing on August 14, 2016.

The Landlord also confirmed that she did not make an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address in writing.

In response to the Tenants' claims the Landlord provided written submissions wherein she wrote that the Tenant, P.L. was the only Tenant who signed the tenancy agreement and that he smoked in the rental unit contrary to the terms of the tenancy agreement.

The Landlord submitted that on September 30, 2017 P.L. asked for his security deposit in cash. She stated that she returned \$675.00 to P.L, and he agreed she could retain \$225.00 towards the cost of cleaning, etc. She confirmed that she did not have his agreement in writing.

The Landlord stated that when she had the conversation with P.L., the Tenant, L.A., was cleaning and therefore did not hear their conversation.

The Landlord stated that the Tenant, A.L. wrote an email to the Landlord on October 5, 2015 at 10:55 p.m., wherein she agreed to the Landlord retaining \$56.00 from the \$225.00 for the cost of garbage removal; a copy of that email was provided in evidence and reads as follows:

"[Landlord's name] You make deduct \$56.00 dump charge from the \$225.00 deposit which you owe us.

The other charges are not acceptable"

The Tenant confirmed that her spouse received \$675.00 in cash. She denied that they agreed the Landlord could retain \$225.00. She stated this was absolutely false. She stated that her husband asked the Landlord about the \$225.00 and the Landlord said she "forgot about it" and would mail it out.

Analysis

The Tenants seek return of double the pet damage deposit pursuant to section 38 of the *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.

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

I find that the Tenants paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$225.00 for a total of \$900.00 in deposits paid.

I find that the Tenant, P.L. received \$675.00 in cash on September 30, 2017, the day the tenancy ended.

The Landlord alleges that P.L. agreed she could retain the pet damage deposit in the amount of \$225.00. The Tenant, A.L., denies such an agreement exists. Without corroborating evidence I am unable to prefer the evidence of one party over the other. In any case, section 38(4) of the *Act*, mandates that such agreements must be in writing and as such I am unable to find that P.L. agreed the Landlord could retain the \$225.00.

Documentary evidence confirms the Tenant, A.L. agreed the Landlord could retain \$56.00 towards the cost of garbage removal. I therefore find the Tenants agreed the Landlord could retain this amount.

The Landlord failed to return the balance of the deposits or apply for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants as required by section 38(1).

Further, by failing to perform incoming or outgoing condition inspection reports in accordance with the *Act* and the *Regulations* the Landlord has also extinguished their right to claim against the security deposit pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord and the Landlord must comply with the *Act* in all dealings with those funds. If the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Residential Tenancy Policy Guideline 17—Security Deposit and Set Off provides guidance as to how to double the security deposit in the event the Tenant agrees the Landlord may retain some portion of the funds and 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 $\$250$).

The circumstances before me most closely resemble Example C; as such, the Tenants are entitled to \$1,013.00 calculated as follows:

- $\$675.00 + \$225.00 = \$900.00$ in total deposits paid
- Less $\$56.00$ (amount Tenants agreed the Landlord could retain) = $\$844.00$
- $\$844.00 \times 2$ (as per section 38(6) and Example C) = $\$1,688.00$
- Less $\$675.00$ returned to Tenants =
- $\$1,013.00$ owing to Tenants.

The Tenants, having been successful in their application, are also entitled to recovery of the filing fee in the amount of $\$100.00$ for a total of $\$1,113.00$.

Conclusion

The Landlord withheld the pet damage deposit without the written consent of the Tenants and failed to perform condition inspection reports as required by the *Residential Tenancy Act* and the *Residential Tenancy Regulations*.

The Tenants are entitled to return of double the deposits paid pursuant to section 38(6) of the *Act* and as calculated in Example C of the *Policy Guidelines* for a total of \$1,013.00

The Tenants are also entitled to recover the filing fee in the amount of \$100.00.

The Tenants are granted a Monetary Order in the amount of \$1,113.00. This Order must be served on the Landlord and may, if necessary, 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: April 25, 2018

Residential Tenancy Branch