



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES (B.C.) LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On October 3, 2017, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the return of their security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

The Tenants attended the conference call hearing. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified the Application for Dispute Resolution and Notice of Hearing were personally served on the Landlord, at the Landlord's business office, on October 6, 2017. The Tenants provided in documentary evidence a date stamped copy of the Notice of Hearing document, stamped by the Landlords office, to show that it was received by the Landlord. I find that the Landlord has been duly served in accordance with the Act. The Tenants were affirmed to be truthful in their testimony.

The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Has there been a breach of Section 38 of the Act by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The testimony of the Tenants was that the tenancy began on December 7, 2016 as a one year fixed term. Rent in the amount of \$2,000.00 was to be paid by the first day of each month. The Tenants paid the Landlord a \$1,000.00 security deposit (the deposit). The Tenants provided a copy of the tenancy agreement.

The Tenants testified that they ended their tenancy early, on August 31, 2017. However, they testified that they found a new person to rent the unit and confirmed that the Landlord entered into a tenancy agreement with that person effective September 1, 2017.

The Tenants testified that MG attended the rental unit on August 31, 2017 and conducted the move-out inspection with the Landlord. MG testified that the Landlord had forgotten the inspection paperwork, so nothing could be signed at the time of the inspection. However, the Landlord had verbally told him that everything looked good and that no deficiencies were found during the inspection. The Tenants provided documentary evidence of an email conversation between the Landlord and Tenants, that took place between September 1, 2017 and September 8, 2017. In the email, the Landlord has attached a copy of the inspection report and is requesting that the Tenants sign the move-out inspection report, agreeing to the Landlord withholding \$315.00 of their security deposit. The Tenants testified that they refused to sign the move-out inspection report, as attached in the email from the Landlord, as they did not agree to the deduction from their security deposit that the Landlord was requesting.

The Tenants testified that they provided the Landlord their forwarding address in writing on September 12, 2017. They also provided into documentary evidence a date stamped copy of the letter they submitted to the Landlord that provided their forwarding address, to show that the Landlord had received the document. The Tenants testified that the Landlord has not served them with an application to show the Landlord had filed for dispute resolution requesting to keep a portion of their security deposit.

The Tenants testified that they received \$685.00 of their \$1,000.00 security deposit returned to them, on September 18, 2017. They also provided in documentary evidence a copy of the cheque for \$685.00 and the invoice attached, showing that the Landlord had withheld \$315.00 for "Exit Charge – Break Lease". The Tenants testified that they had not give permission for the Landlord to withhold any portion of the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the Landlord 15 days from the later of the day the tenancy ends or the date the Landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit, or repay the deposit to the tenant.

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.

I find that the Tenants ended their tenancy on August 31, 2017 and had provided their forwarding address to the Landlord as required under the *Act* on September 12, 2017. This means that the Landlord had until September 27, 2017 to either return the Tenants' security deposit in full or make a claim against the deposit.

I find that the Landlord withheld \$315.00 from the Tenants security deposit without the consent of the Tenant and failed to make an application for dispute resolution claiming against the deposit, as required by the *Act*.

At no time does the Landlord have the ability to simply keep any portion of the deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenants are unable to agree to the repayment of the deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not

enough that the Landlord thinks they are entitled to keep even a small portion the deposit, based on unproven claims.

Section 38 (6) of the *Act* goes on to state that if the Landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the Landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenants have successfully proven their entitled to the return of double the security deposit, as their full deposit was not repaid within the legislated time limit nor did the Landlord apply to retain the deposit as required.

I find for the Tenants, in the amount of \$1,315.00, granting a monetary order for the return of double the security deposit, minus the funds they have already received.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee.

Security Deposit		\$1,000.00
Deposit Doubled		\$2,000.00
Returned Amount - By Mail	Cheque	-\$685.00
		<hr/>
		\$1,315.00
Filing Fee		\$100.00
Owing		<hr/>
		\$1,415.00

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as they failed to repay the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the Act. I grant the Tenants a Monetary Order in the amount of \$1,415.00 for the return of double the security deposit, less the amount repaid by the Landlord and for the recovery of the filing fee for this application. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 07, 2018

Residential Tenancy Branch