



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; FF

Introduction

This is the Tenants' Application for Dispute Resolution made September 18, 2017, seeking return of the security deposit and pet damages deposit; and to recover the cost of the filing fee from the Landlord. The Tenants also seek compensation pursuant to the provisions of Section 38(6) of the Act (total compensation in the equivalent of double the amount of the deposits).

It was determined that the Tenants served the Landlord with the Notice of Hearing documents and copies of their documentary evidence by registered mail. It was also determined that the Landlord served the Tenant with her documentary evidence by registered mail.

Issue(s) to be Decided

Are the Tenants entitled to return of the security and pet damages deposits and compensation for the Landlord's failure to comply with Section 38 of the Act?

Background and Evidence

It is important to note that a large amount of documentary evidence was provided by the parties. The Landlord included documentary evidence which appears to support a claim for damages; however, the Landlord has not made a claim for damages. The only Application before me is the Tenant's Application. The parties were advised that the Landlord retains the right to make a claim for damages under Section 67 of the Act. Only the evidence that is relevant to the issues and findings in this matter are described in this Decision.

This tenancy began on May 1, 2013. The Tenants paid a security deposit in the amount of \$950.00 and a pet damage deposit in the amount of \$475.00 at the beginning of the tenancy.

On July 24, 2017, the Tenants provided their written notice to end the tenancy effective August 31, 2017. The tenancy ended on August 31, 2017.

The Tenants gave the following affirmed testimony:

The Tenants testified that the Landlord did not complete a Condition Inspection Report with the Tenants at the beginning or the end of the tenancy.

The Tenants testified that they gave their forwarding address to the Landlord's agent CM along with a request to return their post-dated cheques, on August 31, 2017. The Tenants stated that the Landlord returned their post-dated cheques "about a month later" after they moved out of the rental unit and that the Landlord returned the cheques to their forwarding address.

The Tenants testified that they did not agree that the Landlord could apply any of the security or pet damage deposit towards damages. They stated that there were no damages in any event. The Tenants stated that the damage to the walls and the "wear and tear" that the Landlord refers to existed when they moved in. They also submitted that the rental unit was very dirty and it took them hours to clean it.

The Landlord and her agents gave the following affirmed testimony:

The Landlord stated that the Tenants caused damage to the rental unit and that she hired cleaners to clean the rental unit prior to the Tenants moving in. The Landlord stated that there was a condition inspection done by her agents at the beginning of the tenancy.

The Landlord's agents testified that they did a "walk through", but acknowledged that there was no written Condition Inspection Report completed by the parties.

Neither the Landlord nor her agents remembered if or when the Tenants provided their forwarding address. The Landlord stated that she returned the post-dated cheques to the address on the Tenant's Application for Dispute Resolution. The Landlord acknowledged that she still has the Tenants' security and pet damage deposit.

Analysis

Security deposits and pet damage deposits are held in a form of trust by the Landlord and must be applied in accordance with the provisions of Section 38 of the Act. A landlord may not arbitrarily decide whether or not to return all or part of the deposits at the end of a tenancy.

Section 38 of the Act provides:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

- (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
- (b) by giving the deposit personally to the tenant, or
- (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

In this case, it was agreed that the tenancy ended on August 31, 2017. The Tenants allege that they provided their forwarding address in writing to the Landlord's agent CM on August 31, 2017, along with a request to return their post-dated cheques.

The onus is on the Tenants to provide sufficient evidence, on the balance of probabilities, to support their claim. I find that the Tenants provided insufficient evidence that they provided their forwarding address, in writing, to the Landlord's agent CM on August 31, 2017. I find that it is possible that the Landlord did not receive the Tenants' forwarding address until she was served with their Application for Dispute Resolution made September 18, 2017. Provision of a forwarding address in this manner does not meet the requirements of Section 38(1) of the Act. Therefore, the Tenants' claim for compensation under Section 38(6) of the Act is dismissed.

I find that the Landlord extinguished her right to retain all or a part of the deposits, under the provisions of Section 38(5) of the Act. I find that she failed to comply with Section

24(2) [failure to meet start of tenancy condition report requirements] and Section 36 (2) {failure to meet end of tenancy condition report requirements}.

I HEREBY ORDER that the Landlord return the security deposit and pet damage deposit, totalling \$1,425.00, to the Tenants forthwith.

The Tenants have been successful in their application to have the deposits returned to them and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Landlord.

Conclusion

The Tenants are hereby provided with a Monetary Order in the amount of \$1,525.00 for service upon the Landlord. This Order may be enforced in the Provincial Court of British Columbia (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: May 08, 2018

Residential Tenancy Branch