



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord, including return of double her security deposit and two months' rent pursuant to sections 38(6) and 51(2) of the *Residential Tenancy Act*, and to recover the filing fee.

The hearing was conducted by teleconference on June 19, 2018. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:23 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, service of the Tenant's hearing package was considered. The Tenant testified that she served the Landlord with the Notice of Hearing and her Application on November 17, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Tenant testified that the registered mail package was signed for on November 20, 2017. Additionally, the Tenant stated that a friend, S.L., also personally served the Landlord while he was in court pleading guilty to a mischief charge relating to the tenancy.

The Tenant stated that a term of the Landlord's plea in the criminal proceedings was that he would write her an apology and have no contact directly or indirectly with her; she confirmed that he was permitted to call into this hearing as she discussed this requirement with the Crown Counsel handling the case.

I accept the Tenant's undisputed testimony and find the Landlord was duly served with notice of the proceedings and I therefore proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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 Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began March 2014. Monthly rent was payable in the amount of \$1,600.00 and the Tenant paid a \$800.00 security deposit.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on August 20, 2017 (the "Notice"). The reasons cited on the Notice were as follows:

<input checked="" type="checkbox"/> The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Pursuant to section 50 of the *Act*, the Tenant gave ten days' notice to end her tenancy and moved out on September 25, 2017.

The Tenant testified that she provided the Landlord her forwarding address in writing by leaving a handwritten note in the rental unit (with the keys) as well as emailing it to him. She provided in evidence a copy of the email sent September 24, 2017 as well as a photo of the note she left on September 25, 2017.

The Tenant stated that rather than renovate or demolish the rental unit as cited on the Notice, the Landlord rented it out at a higher price. She provided in evidence copies of

the ad for the rental unit confirming the Landlord advertised the unit for \$1,800.00. She also provided an email from E.A., who witnessed the Landlord showing the rental property to prospective tenants on September 23, 2017 and a letter from a neighbour, B.K., who observed people moving into the rental unit.

On her Application the Tenant sought compensation for the following:

compensation for a television stand damaged by the Landlord	\$75.00
return of double the security deposit pursuant to section 38(6)	\$1,600.00
two month's rent pursuant to section 51(2)	\$3,200.00
filing fee	\$100.00
TOTAL CLAIMED	\$4,975.00

The Tenant stated that the Landlord paid her \$75.00 for the cost of her television stand as a condition of his guilty plea in the criminal proceedings such that she was no longer seeking this compensation.

Analysis

The Tenant seeks return of double her security deposit pursuant to section 38 of the *Act*, which reads as follows:

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.

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

I accept the Tenant's undisputed evidence that she did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on September 25, 2017.

The security deposit is held in trust for the Tenant by the Landlord. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. The Landlord in this case had no such authority.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*. Accordingly, and pursuant to section 38(6) the Tenant is entitled to return of double the deposit paid in the amount of **\$1,600.00**.

The Tenant also applies for the equivalent to two month's rent as compensation pursuant to section 51 of the *Act*, which reads as follows

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case the reasons cited on the Notice were that the Landlord intended to demolish or renovate the rental unit to such an extent that vacant possession was required.

I accept the Tenant's evidence and find that the Landlord did not use the rental unit for the purpose set out on the Notice and instead rented it out at a higher price. As such, the Tenant is entitled to the sum of **\$3,200.00** representing two month's rent.

Having been substantially successful I also award the Tenant recovery of the **\$100.00** filing fee.

Conclusion

The Tenant is entitled to the sum of **\$4,900.00** calculated as follows:

Return of double the security deposit pursuant to section 38(6)	\$1,600.00
Two month's rent pursuant to section 51(2)	\$3,200.00
Filing fee	\$100.00
TOTAL AWARDED	\$4,900.00

I grant the Tenant a Monetary Order in the amount of **\$4,900.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division). For the purposes of service of the Order, and section 71 of the *Act*, I find that the Landlord carries on business as the Landlord from the rental unit address and accordingly I permit the Tenant to serve the Landlord at that address.

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: June 19, 2018

Residential Tenancy Branch