



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bastion Development Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks compensation for the return of her security deposit, pursuant to section 38(1)(c) of the Act.

A dispute resolution hearing was convened on March 21, 2019, and the landlord agent, the tenant, and the tenant's advocate attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue of this application are considered in my decision.

Issue to be Decided

Is the tenant entitled to compensation for the return of her security deposit?

Background and Evidence

The tenant testified that the tenancy began on September 1, 2017 and ended on April 27, 2018. Monthly rent was \$2,500.00, which was split between three tenants, one of whom is the tenant in this dispute. There was a security deposit of \$1,250.00, of which \$450.00 is the tenant's share. There was not pet damage deposit. A copy of the tenancy agreement was submitted into evidence.

Two of the tenants vacated the rental unit early, and just one tenant remained. This remainder tenant (R.) was to conduct the move out inspection with the landlord, but at the last minute was unable to do so. She attempted to reschedule, but the landlord did not have anyone available. The landlord proposed an alternate time, and tenant R. said that she was unable to attend and asked if the landlord could simply do the inspection on her own. The landlord said that she could. (The other tenants, including the tenant in this dispute, were out of town and unavailable.)

The move out inspection ultimately occurred on April 27, 2018. A Condition Inspection Report was completed by the landlord. In the Report, the landlord made the decision to retain \$750.00 of the security deposit for carpet cleaning. (An initial deduction for junk removal was later removed as the new tenants wanted to keep the junk.)

The tenant testified that she gave her forwarding address to the landlord on May 7, 2018, by email.

The tenant contests the charges made and seeks compensation in the amount of \$900.00 under the doubling provision of section 38(6) of the Act.

The landlord's agent (the "landlord") testified that there was a move out inspection scheduled for the 27th, and that the tenant R. was unable to make it. The tenant asked if an inspection could be done that afternoon, on the 26th, but the landlord did not have any one available. The tenant then asked if the move-out inspection could be done on the 27th anyway but without her present. The landlord said that this could be done.

During the move out inspection, the landlord noted that the rental unit was not in a clean condition (photographs were submitted into evidence). A copy of the Condition Inspection Report was submitted into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the dispute is about the return of a security deposit. While rather lengthy, I will reproduce the relevant portion of section 38 of the Act, which speaks to security and pet damage deposits:

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.

This case hinges on whether the tenant (or co-tenants) complied with section 36 (1) of the Act, which states:

- The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.

Section 17 of the *Residential Tenancy Regulation* (the “Regulation”) sets out the specifics for how the two opportunities for inspection requirement operates:

- 17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

In this case, the first opportunity was on April 27, 2018. The tenant R. was not available, and proposed an alternative time (i.e., that afternoon). The landlord was unavailable to meet at the proposed alternative time. The landlord did not propose a second opportunity different than the first opportunity and did not provide the tenant with a notice in the approved form with a second opportunity.

The landlord’s right to retain any or all of the security deposit was extinguished under section 38(5) of the Act by failing to comply with section 36 of the Act. Likewise, the tenants did not lose their right to the return of the security deposit because they were in compliance with section 38(2) of the Act by virtue of complying with section 36(1) of the Act.

Given, then, that the landlord had no right under the Act to retain the security deposit, and no written consent from the tenant for the landlord to retain any of the security deposit, sections 38(1) and 38(6) of the Act must be applied.

The landlord received the tenant's forwarding address on May 7, 2018, and the landlord neither repaid the security deposit or made an application for dispute resolution claiming against the deposit within 15 days of receiving the forwarding address. As the landlord did not comply with section 38(1) of the Act, I find, pursuant to section 38(6) of the Act, that the landlord must pay the tenant double the amount of the tenant's portion of the security deposit in the amount of \$900.00.

Conclusion

I grant the tenant a monetary order in the amount of \$900.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 21, 2019

Residential Tenancy Branch