



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sherlock Enterprises Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenant seeks the return of a security deposit pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the “Act”). They also sought compensation for the cost of the filing fee, pursuant to section 72 of the Act.

The tenant applied for dispute resolution on March 9, 2019 and a dispute resolution hearing was held on June 28, 2019. Agents for the tenant and the landlord attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of evidence or notices.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the tenant entitled to the return of their security deposit?
2. Is the tenant entitled to compensation for the cost of the filing fee?

Background and Evidence

The tenant’s agent testified that the tenancy began on January 15, 2014 and ended on or about December 14, 2018. (The landlord’s agent testified that the tenant vacated the rental unit on December 15, 2018.) Monthly rent was approximately \$900.00, but possibly more; the tenant’s agent did not have an exact figure. The tenant paid a

security deposit in the amount of \$400.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

At the end of the tenancy, the parties completed a Condition Inspection Report (a copy of which was submitted into evidence). The tenant provided written consent to the landlord to retain \$131.25 of the security deposit for carpet cleaning. He did not provide written consent for the landlord to retain the remainder of the security deposit in the amount of \$268.75. The tenant also provided the landlord with a forwarding address, in writing, in the Condition Inspection Report on December 15, 2018.

The landlord's agent testified that the tenant was "only charged for the doors and repairs," and was not charged for other repairs that came to an amount more than the security deposit. The tenant was "not charged for anything else."

The landlord's agent agreed with my question as to whether the only specific amount that the tenant consented to being withheld from the security deposit was the \$131.25 for the carpet cleaning. She testified that "we didn't have a figure for the costs of the repairs" at the time of the inspection. Finally, she acknowledged receipt of the tenant's forwarding address on December 15, 2018.

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 tenant seeks to prove that they are entitled to a return of the balance of their security deposit.

Return of Security Deposit

Section 38 of the Act concerns itself with landlord and tenant obligations with security and pet damage deposits.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4)(a) of the Act states the following:

A landlord may retain an amount from a security 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 [. . .]

In this case, the tenant only agreed in writing that the landlord could retain \$131.25 of the security deposit. While the landlord submitted that the tenant was “only” charged for door repairs, and that the amount was not known at the time of the final inspection, a tenant cannot be said to have agreed in writing to an undefined amount. To legally bind a party to an unknown amount would be unconscionable in law.

Given the above, I find that the landlord was only entitled to retain the \$131.25 that the tenant had agreed to in writing. The landlord was not entitled to retain the balance of \$268.75. Had the landlord believed they had a valid claim to the balance, or any other amount for that matter, they were obligated to comply with section 38(1) of the Act and apply for dispute resolution against the tenant within 15 days of receiving his forwarding address. They did not.

Having found that the landlord was not entitled to retain the balance of \$268.75, and having found that the landlord did not return the balance or apply for dispute resolution claiming against this amount, I must now turn to section 38(6) of the Act, which states:

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.

In this case, as the landlord did not comply with subsection 38(1) of the Act, the landlord must pay the tenant double the amount of the portion of the security deposit not refunded, for a total amount of \$537.50.

Compensation for Cost of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

In this case, as the tenant was successful I grant his claim for reimbursement of the filing fee in the amount of \$100.00.

Conclusion

I grant the tenant a monetary order in the amount of \$637.50, 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 (Small Claims Court).

Except as otherwise provided in the Act, this decision and order is final and binding on the parties and is made on authority delegated to me under section 9.1 of the Act.

Dated: June 28, 2019

Residential Tenancy Branch