



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 26, 2019 (the “Application”). The Tenant applied for return of double the security and pet damage deposits.

The Tenant appeared at the hearing. The Agent appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent advised he received the hearing package but no evidence from the Tenant. The Tenant advised that she received the Landlord’s evidence the day before the hearing.

At first, both parties took issue with admissibility of the other party’s evidence. After some discussion about this, the parties agreed to the admissibility of each other’s evidence despite the service issues.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 01, 2016 and was a fixed term tenancy ending June 30, 2017. The Tenant paid a \$475.00 security deposit and \$600.00 pet damage deposit.

I understood the parties to agree the Tenant paid a \$50.00 key deposit.

Both parties agreed the Tenant provided the Landlord with her forwarding address on the Condition Inspection Report on move-out. The report is in evidence. The Tenant testified that this occurred January 31, 2019. The Agent testified this occurred February 01, 2019.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Agent testified that the Tenant agreed to the Landlord keeping \$1,020.00 of the deposits on the "charge form" during the move-out inspection February 01, 2019. The Tenant acknowledged she agreed to the Landlord keeping \$1,020.00 of the deposits but said this occurred January 31, 2019.

The parties agreed \$105.00 in deposits, including the key deposit, remained outstanding after the Tenant agreed to the Landlord keeping \$1,020.00 of the deposits.

The Agent testified that the Landlord never applied to the RTB to keep any of the deposits.

The parties agreed a move-in inspection was done and someone for the Landlord and the Tenant participated in this.

The parties agreed a move-out inspection was done and someone for the Landlord and the Tenant participated in this. The Agent testified this occurred February 01, 2019. The Tenant testified this occurred January 31, 2019.

The Tenant testified that she received a cheque from the Landlord February 17, 2019. She testified it was dated February 15, 2019 and was for \$100.00. The Tenant said the cheque was issued to her and another person, so she cannot cash it.

The Agent testified that there was a cheque issued to the Tenant but did not know if his colleague had given it to the Tenant. The Agent did not dispute the testimony of the Tenant about the cheque. However, he did say his records show the cheque was only issued to the Tenant. He agreed the cheque was for \$100.00. I understood him to say the Landlord's records were incorrect about the amount of the deposits. He testified that \$50.00 of the \$100.00 was for the key deposit.

The Agent testified about why the Landlord kept the \$105.00 remaining from the deposits at the end of the tenancy. He advised that the Tenant had a utilities account in her name but that the city sends the final bill and charges the Landlord for this if the Tenant fails to pay it. He said the Landlord therefore asked the Tenant if they could keep the \$105.00, without penalty, until the final bill was issued by the city and the Tenant showed the Landlord proof that it had been paid. The Agent testified that the Tenant agreed to this over the phone. He said the Landlord followed up with an email, which is in evidence, but that the Tenant never replied to the email.

The Tenant denied that she agreed over the phone to the Landlord keeping the remainder of the deposits without penalty.

Analysis

Section 38 of the *Residential Tenancy Act* (the "Act") sets out the obligations of landlords in relation to security and pet damage deposits held at the end of a tenancy and states:

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...

Sections 24 and 36 of the *Act* address extinguishment and state:

24 (1) 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 has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

36 (1) 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.

I accept that the Tenant vacated the rental unit January 31, 2019 and that the inspection was done on this date given this is what the Condition Inspection Report states. Therefore, I find the tenancy ended January 31, 2019 and the Landlord received the Tenant's forwarding address in writing on January 31, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from January 31, 2019 to repay the security and pet damage deposits or file a claim with the RTB claiming against them. However, there are exceptions to this in sections 38(2) to 38(4) of the *Act*.

There is no issue that the Tenant participated in the move-in and move-out inspections and therefore I find she did not extinguish her rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*. I find the exception in section 38(2) of the *Act* does not apply.

There is no issue that the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Therefore, the exception in section 38(3) of the *Act* does not apply.

The parties agreed the Tenant provided the Landlord with written consent to keep \$1,020.00 of the deposits during the move-out inspection.

The Tenant did not submit that the Landlord extinguished their right to claim against the deposits pursuant to sections 24 or 36 of the *Act* and therefore I do not find that the Landlord did.

I find the Landlord was permitted to keep \$1,020.00 of the security and pet damage deposits pursuant to section 38(4)(a) of the *Act*.

I find that \$55.00 of the security and pet damage deposits remained in the Landlord's possession without the consent of the Tenant. I do not accept that the Tenant agreed verbally to the Landlord keeping this amount past the 15-day time limit set out in section 38(1) of the *Act* as the Tenant denied this and the Agent has not pointed to any evidence of this verbal agreement. I do not find the email to be evidence of a verbal agreement as it is simply the Landlord's position and the Tenant did not reply to it.

I find the Landlord had 15 days from January 31, 2019 to repay the \$55.00 or make an application with the RTB claiming against it.

There is no issue that the Landlord did not make an application with the RTB claiming against the \$55.00.

Based on the testimony of the parties, I find the Landlord did return \$100.00 to the Tenant February 15, 2019 at the earliest as this was the date of the cheque. The Agent testified that \$50.00 of this was for the key deposit. Therefore, only \$50.00 of it was for the deposits.

Returning a portion of the \$55.00 was not sufficient. The Landlord was required to repay the full \$55.00 within the 15-day time limit. The Landlord failed to do so and therefore failed to comply with section 38(1) of the *Act*.

Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the remainder of the security and pet damage deposits and must pay the Tenant double the amount of the deposits.

Policy Guideline 17 deals with security and pet damage deposits and provides the following example of how they will be doubled:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

This example applies here. The Tenant paid a \$475.00 security deposit and \$600.00 pet damage deposit. The Tenant agreed to a \$1,020.00 deduction which left \$55.00. The \$55.00 is doubled to be \$110.00. This amount must be returned to the Tenant.

The Tenant testified that she cannot cash the cheque sent by the Landlord because it is made out to her and another person. Therefore, the Landlord is to return \$110.00 as double the security and pet damage deposits as well as the \$50.00 for the key deposit for a total of \$160.00. The Tenant is issued a Monetary Order for this amount. The Tenant must not both cash the cheque and enforce this Monetary Order. If the Tenant does cash the cheque, this Monetary Order is not enforceable.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$160.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: June 20, 2019

Residential Tenancy Branch