



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 304768 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package provided to the landlord's office on June 19, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the hearing, the tenant gave sworn testimony that they received a cheque for \$283.25, the amount of the portion of their security deposit that they had agreed to receive from the landlord in the mail on June 19, 2019. Although they were satisfied with this eventual return of their security deposit, they maintained that they were still entitled to a monetary award for the landlord's lateness in returning this security deposit to the tenant. Their application for a monetary award of \$950.00 was submitted prior to the tenant's receipt of the \$282.25 cheque from the landlord.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit less the amount actually received as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed that this month-to-month tenancy began on July 1, 2016. According to the terms of their Residential Tenancy Agreement (the Agreement), monthly rent was set at \$850.00, payable in advance on the first of each month. The tenant paid a \$425.00 security deposit on June 13, 2016.

The parties agreed that the tenant placed their written notice to end this tenancy in the landlord's mail slot on March 31, 2019. In that written notice, the tenant also supplied the landlord with their forwarding address for the return of their security deposit. Although the tenant actually vacated the rental unit on April 11, 2019, the tenant gave undisputed sworn testimony that they paid rent for the entire month of April 2019.

The landlord confirmed having received the tenant's forwarding address in writing when the notice to end tenancy was provided by the tenant on or about March 31, 2019. The tenant gave sworn testimony that they had given the landlord their authorization to the landlord to retain \$141.75 from their security deposit for carpet cleaning that the tenant did not undertake at the end of this tenancy.

While the landlord attempted to return the remaining \$283.25 from the security deposit to the tenant by mail, the landlord said that they erred in part of the tenant's address that was provided to the accountant who was issuing the cheque to the tenant. When the tenant subsequently contacted the landlord to enquire about the status of their cheque, the landlord discovered that the cheque had not reached its destination and had to stop payment on the cheque and reissue it. More complications arose in locating the whereabouts of the second cheque, before it was finally mailed successfully to the tenant.

The tenant testified that the original cheque was sent on May 15, 2019, the same date that the landlord was supposed to have returned the security deposit to the tenant. The tenant maintained that the landlord's error in the correct address the tenant provided to the landlord led to it taking 50 days to have their security deposit returned to the tenant. The tenant testified that they had never waived their right to obtain a monetary award

equivalent to the value of the original deposit for the landlord's failure to comply with the provisions of section 38 of the *Act*, requiring the return of the security deposit within 15 days of the end of this tenancy.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after April 30, 2019, to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if at the end of a tenancy, the tenant agrees that the landlord may retain the amount to pay a liability or obligation of the tenant. While the tenant did give the landlord permission to retain \$141.75 from their security deposit, they did not give the landlord authorization to retain the remaining \$283.25 from that deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*

- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's \$283.25 security deposit within the required 15 days. While the landlord's mistake in conveying the address to the person tasked with sending the security deposit cheque to the tenant was unintentional, the reality is that it took far longer to return this security deposit to the tenant than is allowed under section 38 of the *Act*. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act* and after considering RTB Policy Guideline 17, I find that the tenant is therefore entitled to a monetary order amounting to double the value of the amount of the security deposit that was to be returned to the tenant less the amount that has already been returned to the tenant.

Having been successful in this application, I find further that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double the value of the security deposit that was to be returned to the tenant, less the amount already returned to him, plus the recovery of his filing fee.

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($\$283.25 \times 2 = \566.50)	\$566.50
Less Returned Portion of Security Deposit	-283.25
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$383.25

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with

these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: September 24, 2019

Residential Tenancy Branch