



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*. Both parties provided affirmed testimony. Both had the opportunity to cross examine the other party, to submit evidence and to call witnesses.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed on the following: the tenancy began on November 1, 2016. Rent was \$1,300.00 monthly payable on the first of the month. The tenant provided a security deposit of \$625.00 at the beginning of the tenancy; the tenant later provided a pet deposit of \$1,000.00 (Together these deposits total \$1,625.00 and are referred to as the 'security deposit'). The tenant provided the landlord with her forwarding address when she vacated January 16, 2019, or shortly thereafter. The landlord has not returned the security deposit; the tenant has not authorized the landlord to retain the security deposit.

The parties testified that the landlord brought an application for authorization to retain the security deposit within 15 days of the end of the tenancy under a file number to which reference is made on the first page; the parties agreed the landlord did not attend the scheduled hearing and that the landlord has not obtained an order authorizing the landlord to retain the security deposit. The landlord testified the landlord has not brought any subsequent application with respect to the security deposit or damages to the unit.

The landlord explained that she retained the security deposit because of damages to the unit allegedly caused by the tenant.

The tenant claims reimbursement of double the security deposit (\$1,625.00 x 2) as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing.

On November 25, 2019, the landlord issued and served a Two Month Notice to End

Tenancy for Landlord's Use ("Two Month Notice"). The Two Month Notice stated that a close family member of the landlord intended to occupy the unit. The landlord testified that no close family member moved in to the unit; the unit was later occupied by a non-family person.

Neither party submitted a copy of the Two Month Notice.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

Security Deposit:

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(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

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I accept the parties' evidence that the landlord brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*, that the landlord did not attend at the scheduled hearing, and her application was dismissed. I accept the parties' evidence that no order has been issued in favour of the landlord with respect to the tenant's security deposit or purported damages to the unit.

As acknowledged by both parties, I find the tenant provided their forwarding address in writing pursuant to section 38(1)(b) at the end of the tenancy in mid-January 2019. As also acknowledged by the parties, I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenant a monetary award in the amount of \$3,250.00 (\$1,625.00 x 2).

The landlord may still file an application for alleged damages. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlord must file their own application for damages, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Two Month Notice

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

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.

Section 6 of the Rules of Procedure describes the standard of proof as follows:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application.

In this case, the onus is on the tenant to prove they are entitled to a claim for a monetary award.

The tenant's claim they are entitled to 12 months' rent as compensation under section 51. They claim that they vacated the unit at the landlord's demand to allow the landlord's close family member to move in and that this did not take place. The landlord acknowledged that no family member moved in to the unit and the unit was subsequently rented to another occupant.

Section 51 states in part as follows (emphasis added):

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- a. steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- b. the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

For this section to be applicable, a Two Month Notice must have been issued that complies with section 52 of the Act.

Section 49(7) states:

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...

Section 52 states that, to be effective, the Two Month Notice must be in the approved form and must provide essential information about the tenancy and the landlord's grounds for issuing the tenancy.

Section 52 states:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
(e) when given by a landlord, be in the approved form.

Neither party submitted as evidence a copy of the Two Month Notice. Because no copy of the Two Month Notice was submitted as evidence, I find that the tenant has failed to meet the burden of proof on a balance of probabilities that any Two Month Notice was issued. As such, I am unable to determine whether any such Notice complied with section 52 as required under the Act. Accordingly, I find the tenant has not established that they are entitled to compensation under section 51.

I therefore dismiss the tenant's claim in this regard without leave to reapply.

Summary

As the tenant has been successful in one of the claims, I grant the tenant reimbursement of the filing fee in the amount of \$100.00.

I grant the tenant a monetary order of **\$3,300.00** calculated as follows:

ITEM	AMOUNT
Reimbursement of security deposit	\$1,600.00
Reimbursement of double security deposit	\$1,600.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award tenant =	\$3,300.00

Conclusion

I grant the tenant a monetary order in the amount of **\$3,300.00**. This order must be served on the landlord. If the landlord fails to pay this amount, the tenant may enforce this order in the Supreme Court of British Columbia, Small Claims Division 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 *Residential Tenancy Act*.

Dated: October 07, 2019

Residential Tenancy Branch