



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain the return of double her security deposit pursuant to section 38;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by a translator.

Preliminary Issue – Evidence

The tenant submitted a copy of the tenancy agreement her only evidence. She also relied on a prior written decision of the Residential Tenancy Branch (the "**RTB**") dated February 12, 2019, written following a hearing between the parties. The landlord confirmed she had copies of both these documents.

The landlord uploaded a number of documents to the RTB website in support of her application. However, she did not serve any of these documents on the tenant. She testified that she did not know she was required to. Rule of Procedure 3.15 requires that the respondent (in this case, the landlord) serve their documentary evidence on the applicant (in this case, the tenant) not less than seven days before the hearing.

It is every parties' responsibility to comply with the rules of procedure. I find that that the landlord failed to do this. As such, I decline to allow that the documentary evidence uploaded to the RTB site be entered into evidence. I will not consider it when making my decision. The landlord was, of course, permitted to provide oral testimony at the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of twice her security deposit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 15, 2019. Monthly rent was \$2,100. The tenancy agreement states that the tenant paid a security deposit of \$1,000 to the landlord. However, the parties agreed that she in fact paid the landlord a security deposit of \$1,050 (\$1,000 at the start of the tenancy, and then \$50 shortly thereafter), which represented 50% of the monthly rent. The landlord still retains this deposit.

The parties attended a participatory hearing at the RTB on September 14, 2019. Following the hearing, the arbitrator awarded the landlord an order of possession. The parties agree that the tenancy ended on October 8, 2019.

On February 12, 2019, the parties appeared before the RTB a second time. The tenant applied for the return of the security deposit. The arbitrator found that "the tenant did not provide the landlord with her forwarding address in writing", a requirement of section 38(1) of the Act to having the security deposit returned. The arbitrator dismissed the tenant's claim, with leave to reapply. In the February 12, 2019 decision, he wrote:

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that she had 15 days from the date of the hearing, until February 27, 2019 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The tenant testified that the landlord did not do any of these things in the 15 days following the February hearing, and therefore has applied for the return of her deposit. She testified that although she realizes she may be entitled to the return of double her security deposit (\$2,100), she is only seeking the return of the amount of the security deposit (\$1,050) notwithstanding her application.

The landlord testified that she believed that following the February 12, 2019 hearing she was not required to take any further action with regards to this tenancy. She testified that she is not applying for any additional funds from the tenant, even though she believes the tenant owes her more than the amount of the security deposit. The landlord testified that she has since sold the rental property.

Analysis

In his written decision following the February 12, 2019, the arbitrator directed the landlord to take steps regarding the security deposit that comply with the landlord's obligations under the Act.

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the testimony of the parties, I find that the tenancy ended on October 8, 2018 and that the landlord was provided with the tenant's forwarding address on February 12, 2019.

I find that the landlord has not returned the security deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

I find that the tenant has not provided written consent to the landlord that she may retain the security deposit.

As such, I find that she has failed to comply with her obligations under section 38(1) of the Act.

It is not enough for the landlord to allege the tenant caused damage to the rental unit. She must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenant's forwarding address.

Aside from being written in the Act, the landlord's obligations were clearly set out in the February 12, 2019 decision. Despite this, she neither returned the security deposit nor applied to the RTB to keep the security deposit.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. However, Policy Guideline 17 states:

- 3. 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;

Based on her oral testimony, I find that the tenant has explicitly waived the doubling of the deposit.

As such, and as the landlord has failed to comply with section 38(1), I order that the landlord pay the tenant \$1,050 (the amount of the security deposit).

Conclusion

Pursuant to sections 38 and 67 of the Act, I order that the landlord pay the tenant \$1,050, representing the return of the security deposit. Should the landlord not comply, this order may be filed and enforced in 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 *Residential Tenancy Act*.

Dated: October 8, 2019

Residential Tenancy Branch