



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 9005 Skier's Rest Lane Wedgewoods
Ltd. and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This review hearing is convened to hear the Tenant's claims pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing and is represented by its Agent. The Landlord and Tenant's Agent were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the email addresses set out for the Landlord in the Tenant's application are correct.

The Parties confirm the following:

- On March 8, 2019 a Decision dismissed the Tenant's first application for the return of the security deposit and a claim for compensation with leave to reapply. In this Decision the Landlord was deemed to have received the Tenant's forwarding address and had 15 days from this date to deal with the Tenant's security deposit;
- The Tenant subsequently made a second application, the current application, and in a Decision dated September 13, 2019 (the "Original Decision") the Tenant was granted a monetary order for the return of double the security deposit of

\$24,000.00, compensation of \$4,000.00 for a cash signing fee taken by the Landlord and recovery of the \$100.00 filing fee;

- The Landlord sought a review of the Original Decision and Order on the basis of an inability to attend the hearing. In a Review Consideration Decision dated September 30, 2019 the Original Decision was suspended and a review hearing was granted;
- The review hearing resulted in a Review Decision dated December 11, 2019 that confirmed the Original Decision and Order; and
- The Landlord sought a review of the Review Decision on the basis of new and relevant evidence and in a Review Consideration Decision dated December 31, 2019 the Landlord was granted another review hearing on the basis of fraud. The Review Decision and the Original Decision were suspended.

Preliminary Matters

The Tenant's application sets out a claim of \$6,000.00 for the return of the security deposit and a compensation claim of \$28,000.00 for return of double the security deposit ($\$12,000.00 \times 2 = \$24,000.00$) under both the Act and the tenancy agreement and for the return of a \$4,000.00 cash signing fee (the "Fee").

I note that the Original Decision clarifies the Tenant's application and records an amendment request by the Tenant to reduce the amounts being claimed as follows:

During the hearing, the tenant's agent requested to amend the tenant's claims to clarify that the tenant was seeking the return of the \$12,000.00 security deposit and statutory compensation equivalent to the amount of the security deposit of \$12,000.00 due to the landlord's failure to comply with the Act, and the return of the \$4,000.00 signing fee collected by the landlord at the beginning of the tenancy in contravention of the *Act*. Therefore, the tenant's claim for an additional \$6,000.00 was waived by the tenant's agent. As the tenant sought to amend their claim by reducing the amount of claim sought, I found that the tenant's requested amendment is not prejudicial to the landlord. Therefore,

pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to reduce the amount of the claim from \$34,000.00 to \$28,000.00.

The Tenant's Agent, hereinafter referred to as the "Tenant", requests another amendment as follows:

- \$4,000.00 for the repayment of the Fee;
- \$24,000.00 for breach of the tenancy agreement that deals with the security deposit; and
- \$24,000.00 for the breach of the Act that deals with the security deposit.

The Tenant acknowledges that the total claimed amount for the above monetary amounts claimed is over the \$35,000.00 limit and agrees to limit its total claim to that amount. The Tenant confirms that this increased claim was submitted to the RTB but that no application was made to amend the original application in advance of the hearing.

Rule 4.1 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "Rules") provides that an applicant may amend a claim by completing and Amendment to an Application for Dispute Resolution form and filing the amendment directly with the RTB or a Service BC office. Rule 4.2 of the Rules provides that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. Without determining whether the terms of the tenancy agreement merely restate the Act's provisions in relation to return of double the security deposit or provide an extra penalty source for double the security deposit, given that no amendment application was filed to increase the original claimed amounts and as the Tenant has not provided evidence of any circumstances that could reasonably be anticipated to increase its total claimed amount by \$24,000.00, I find that the Tenant may not amend the application as requested. As the Tenant made no submissions that the previously waived claim of \$6,000.00 was still being sought and given the monetary amounts being sought in the

amendment does not include a claim for \$6,000.00, I restrict the Tenant's application to a total claimed amount of \$28,000.00 as follows:

- \$400.00 repayment of the Fee; and
- \$24,000.00 as the claim for return of double the security deposit.

In addition to the above I will consider the Tenant's claim for recovery of the filing fee as done in the normal course for dispute resolution under the Act.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed facts: the tenancy under written agreement started on March 30, 2018 and ended on April 30, 2018. Rent of \$12,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$4,000.00 in cash as the Fee and \$12,000.00 as security deposit. On May 31, 2018 the Landlord returned \$4,944.23. The Tenant did not cash this cheque that is now stale dated. 2018. On March 8, 2019 the Landlord received the Tenant's forwarding address as set out in the Original Decision dated March 8, 2019. The Landlord has not made any application to retain any portion of the security deposits.

The Landlord does not dispute the Tenants claim for return of the \$4,000.00 Fee.

The Landlord states although the tenancy agreement was signed on March 20, 2018 and sets out a start date of March 30, 2018, the Tenant was allowed to move into the unit on March 15, 2018. The Landlord states that the Tenant agreed in writing for the Landlord to deduct \$6,000.00 from the security deposit for the rent owed for April 16 to 30, 2018. The Landlord states that this agreement is contained in an email from the Tenant dated April 30, 2018. I note that this email could not be found in the Landlord's

evidence submissions but was found in the Tenant's evidence materials and sets out as follows:

Ok but we need to cut the rent effective today. I am out of the house already. We can revise the water and electric bills when you return but I want to make sure the rent is collected until today and not may 14 when you get back. (reproduced as written)

The Landlord states that no rents for April 2018 were received from the Tenant. The Landlord also confirms that at the outset of the tenancy the Tenant paid \$12,000.00 for rent and \$12,000.00 for a security deposit. The Landlord states that after deductions for rent and utility costs from the \$12,000.00 security deposit the Landlord returned the remaining amount of \$4,944.23. The Landlord states that the only accounting for the deduction amounts was made on a stub for the cheque. It is noted that no cheque stub was identified in its evidence materials from the Landlord however an apparent accounting is set out in writing over a phone bill indicating a rental deduction of \$18,000.00 for a period of 6 weeks.

The Landlord agrees that it had no right to make the deductions from the security deposit and also states that it should not have made deductions for utilities but made an appropriate deduction of \$6,000.00 for rent for the period April 16 to 30, 2018.

The Landlord argues that if the Tenant is entitled to return of double the security deposit this doubling should only be based on the security deposit remaining after deduction of the \$4,944.23 or on \$1,055.77 as otherwise a tenant could sit on a returned amount and obtain a win fall based on the original amount of the security deposit.

The Tenant argues that the characterization of the Tenant's email as a written agreement to deduct rent from the security deposit is outlandish and does not meet the Act or regulation requirements. The Tenant states that the Landlord has acknowledged in its written submission that it had no authority to make any deductions. The Tenant states that the cheque for \$4,944.23 was sent to the Tenant without any explanations

on its calculations. The Tenant states that the Landlord was asked to confirm that cheque amount was only partial satisfaction of the total claim and no such confirmation was provided. The Tenant states that as a result the cheque was not cashed due to concern that to accept this amount would be to accept it as settlement of the entire claim. The Parties agree that the cheque is now stale dated.

Analysis

Section 19 of the Act provides that

(1)A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2)If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the agreed facts that the rent was \$12,000.00 per month I find that the Landlord could only collect \$6,000.00 as a security deposit and that the Landlord breached the Act by collecting \$12,000.00 as a security deposit.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if 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. While the Tenant's email of April 30, 2018 supports an inference that rent was no longer payable after April 30, 2018, it makes no reference to the security deposit nor does it set out any amount of an agreed upon deduction from the security deposit. For this reason, I consider that the email cannot be characterized as written agreement by the Tenant for the Landlord to retain either "an amount" or "the amount". I find therefore that the Landlord did not have the Tenant's written agreement to make any deductions from the security deposit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 sets out policy in relation to determining the doubling of the security deposit and only excludes from the double calculation the following:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

As no agreement was given to the Landlord to make any deduction from the security deposit, I find that the original amount of the security deposit of \$12,000.00 may be used to calculate the doubling provision to \$24,000.00. Based on the undisputed evidence that the Landlord did not repay the security deposit of \$12,000.00 and did not make an application to claim against the security deposit I find that the Landlord must now pay the Tenant double the security deposit of **\$24,000.00**.

As the Landlord has not disputed the Tenant's claim for **\$4,000.00**, I find that the Tenant has substantiated an entitlement to this amount.

As the Tenant has been successful with its claims, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee. Given the above findings I find that the Landlord has not provided evidence that would support a different outcome than in the Original Decision or Review Decision. These decisions are hereby confirmed as is the Order dated September 13, 2019 granting the Tenant an entitlement of **\$28,100.00**.

Conclusion

The Original Decision and Order dated September 13, 2019 and the Review Decision are **confirmed**.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 12, 2020

Residential Tenancy Branch