



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on November 1, 2019 wherein the Tenants sought return of their security deposit and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on March 19, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Should the Tenants recover the \$100.00 filing fee?

Background and Evidence

In support of the Tenants' claim, the Tenant, A.G., testified as follows. He stated that the tenancy began October 1, 2019, monthly rent was \$2,750.00 and the Tenants paid a security deposit in the amount of \$1,375.00.

The tenancy ended on July 31, 2019. By letters dated August 12 and August 13, 2019 (which were emailed to the Landlord) the Tenants provided the Landlord with their forwarding address.

The Landlord responded to the Tenants by email dated September 20, 2019, and informed the Tenants he would retain \$200.00 from their deposit. A.G. confirmed that he did not agree to this deduction.

A.G. further confirmed that the Landlord did not serve them with an Application for Dispute Resolution.

The Tenant, N.V., also testified. He confirmed the rent was \$2,750.00 and they paid a security deposit of \$1,375.00. He further confirmed they did not give the Landlord permission to retain the \$200.00 from the deposit.

The Landlord responded to the Tenants' claim as follows. He confirmed he received the Tenants forwarding address on August 13.

The Landlord further confirmed that he did not apply for dispute resolution within 15 days of receipt of the Tenants' forwarding address.

The Landlord claimed the Tenants agreed to the \$200.00 reduction when they moved out as they broke their lease and damaged a sofa. He confirmed they did not agree in writing, rather he stated that the Tenants agreed verbally.

The Landlord testified that he re-rented the rental unit on August 1, 2019 such that he did not suffer a loss of rent.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

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.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Landlord received the Tenants' forwarding address in writing on August 13, 2019.

The evidence confirms that the Landlord failed to return the Tenants' deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

I accept the Tenants' evidence that they did not agree to the Landlord retaining any portion of the security deposit. The Landlord alleged the Tenants' agreed to this deduction "verbally" when they performed the move out inspection. As section 38(4) provides, a Tenant must agree *in writing* to deductions to their deposit. There was no such documentary evidence indicating that the Tenants agreed to any deductions. It is notable that less than two weeks after the tenancy ended the Tenants sent an email to the Landlord and requested return of their entire deposit; had they agreed to the Landlord retaining the sum of \$200.00, presumably they would have made some mention of this in their email to the Landlord. On balance I find the Tenants did not authorize the Landlord to retain \$200.00.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator.

As discussed during the hearing, if the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. The Landlord cannot make a claim for monetary

compensation through the Tenants' Application; rather, the Landlord must make their own claim.

I therefore find the Tenants are entitled to return of double the security deposit as provided for in section 38(6) of the *Act*. As the Tenants have received some amount from the Landlord, that amount must be considered in any calculation of what is owing to her.

In such situations guidance is found in the *Residential Tenancy Policy Guidelines; Guideline 17—Security Deposit and Set Off* provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- **Example A:** A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

- **Example B:** A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

- **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).

Note: Interest is not included in the examples above, for the sake of simplicity. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

The case before me most closely resembles Example A above; as such, I find the Tenants are entitled to the sum of **\$1,575.00** calculated as follows:

$$\begin{array}{r} \$1,375.00 \text{ (total deposits paid)} \\ \times 2 \\ = \$2,750.00 \\ - \$1,175.00 \text{ (amount already paid to Tenants)} \\ = \mathbf{\$1,575.00} \end{array}$$

As the Tenants have been successful in their Application, I also find, pursuant to sections 38 and 72 of the *Act* that the Tenants are entitled to recover the \$100.00 filing fee for a total award of **\$1,675.00**.

Conclusion

The Tenants are entitled to return of double the security deposit paid pursuant to section 38 of the *Act*. The Tenants are also entitled to recover the \$100.00 filing fee.

In furtherance of this the Tenants are granted a formal Monetary Order in the amount of **\$1,675.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: March 19, 2020

Residential Tenancy Branch