



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 12, 2019, in which the Tenant sought return of double the security deposit paid.

The hearing of the Tenant's Application was scheduled for teleconference 1:30 p.m. on April 2, 2020. The Tenant's Advocate, S.F., and the Landlord 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 Matter

During the hearing the Landlord stated that he did not return the Tenant's security deposit because he believed the Tenant owed him rent. When I informed him that he was required to make his own Application he became agitated and argumentative. He insisted that the Tenant's Advocate should resolve matters by agreement as he believed his claim was more valuable than that of the Tenant's. When the Tenant's Advocate confirmed they were not willing to resolve matters by agreement, the Landlord used profanity and abruptly disconnected from the line.

After the Landlord disconnected, I did not hear any further evidence from the Tenant's Advocate and merely confirmed her email address for the purpose of delivery of the Decision and Order.

Issue to be Decided

Is the Tenant entitled to return of double the security deposit paid?

Background and Evidence

The Tenant's Advocate testified as follows.

She confirmed that they appeared before the Residential Tenancy Branch on October 25, 2019 at which time the Landlord was ordered to comply with section 38 of the *Act*. A copy of that Decision was provided in evidence before me; the relevant portions of that Decision read as follows:

Now that the Landlord has the Tenant's forwarding address, if the Landlord does not comply with Section 38(1) of the *Act* within 15 days, the Tenant may file a new application seeking the return of double the deposit pursuant to Section 38(6) of the *Act*. The Tenant's application is therefore dismissed, with leave to reapply.

The Advocate confirmed that the Landlord did not return the deposit, nor did he make an Application for Dispute Resolution, as such and pursuant to the direction of Arbitrator Trotter, the Tenant applied for return of double the deposit paid.

In response to the Tenant's claim, the Landlord testified as follows. He confirmed that he did not return the Tenant's security deposit as he believed the Tenant did not give adequate notice to end his tenancy and therefore owed him a month's rent.

Analysis

The Tenant applies for return of double his 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
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.

The parties attended a hearing on October 25, 2019 at which time the Landlord was directed to comply with section 38 of the *Act*. Section requires a Landlord to either return the Tenant's security deposit or make an application for dispute resolution within 15 days of the hearing.

The evidence confirms the Landlord failed to return the deposit and failed to make an Application for Dispute Resolution.

I accept the Tenant's Advocate's evidence that the Tenant did not agree to the Landlord retaining any portion of his security deposit.

Pursuant to the Decision of Arbitrator Trotter, I find that the Landlords received the Tenants forwarding address in writing on October 25, 2019.

The Landlord failed to return the 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* and the Order of Arbitrator Trotter made October 25, 2019.

The security deposit is held in trust for the Tenant 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 Tenant and an Order from an Arbitrator.

The Landlord stated that he believed he was entitled to retain the funds as the Tenant failed to give proper notice to end his tenancy. This was the same argument he advanced during the hearing before Arbitrator Trotter as noted in her Decision as follows:

The Landlord testified as to concerns with the cleanliness of the rental unit at the end of the tenancy. He also stated his position that since the Tenant did not provide a full month notice to end the tenancy that he had the right to keep the security deposit.

As discussed during the hearing before me, if the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's 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 simply retain the funds,

nor can he make an Application through the Tenant's Application; rather, he must make his own Application for Dispute Resolution.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$650.00**, comprised of double the security deposit (2 x \$325.00).

Conclusion

The Tenant's application for return of double his security deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$650.00**. The Tenant 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: April 03, 2020

Residential Tenancy Branch