



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-DR, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 15, 2020, wherein the Tenant sought return of her security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on October 1, 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.

Issues to be Decided

1. Is the Tenant entitled to return of her security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

In support of her claim the Tenant testified as follows. She stated that this tenancy began January 1, 2018. Originally rent was payable in the amount of \$800.00 per month and was increased to \$820.00 at the time the tenancy ended. The Tenant paid a \$400.00 security deposit.

The Tenant provided her forwarding address to the Landlord by hand written letter dated July 29, 2020. A copy of this letter was provided in evidence before me. The tenancy ended as of August 1, 2020.

The Tenant testified that the Landlord failed to return her security deposit and failed to apply for dispute resolution. She also confirmed that she did not authorize the Landlord to retain any of her deposit.

The Tenant alleged the Landlord failed to conduct a proper move in condition inspection and refused to provide her a copy of the report.

In response to the Tenant's claims the Landlord confirmed he accepted a \$400.00 security deposit from the Tenant. The Landlord also confirmed he received the Tenant's forwarding address however he was not certain as to the date. Written submissions provided by the Landlord indicate he received her forwarding address before the end of the tenancy.

The Landlord conceded that he did not apply for dispute resolution as he believed that once he missed the 15-day deadline he was no longer able to apply. The Landlord also stated the he returned \$225.00 to the Tenant. He confirmed he did not have the Tenant's permission to retain the balance of her deposit. He also stated that it was his hope they would agree to deductions to the deposit to avoid the necessity of a hearing.

The Landlord also denied the Tenant's claim that he failed to perform a move in inspection. He noted that while he didn't use the government form, he did a walk through with the Tenant and used a checklist. He also stated that he sent the form to the Tenant for her review and signature and she did not return it.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

The Tenant applies 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 accept the Tenant's evidence that she did not agree to the Landlord retaining any portion of her security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 29, 2020. I further find the tenancy ended on August 1, 2020. Section 38(1) provides that the Landlord must return the deposit or apply for arbitration, within 15 days of the later of either the end of the tenancy or receipt of the forwarding address of the Tenant. In this case the end of the tenancy is the date from which the 15 days is calculated.

The evidence confirms that the Landlord failed to return the Tenant's security deposit or apply for dispute resolution by August 16, 2020 as required under section 38(1) of the *Act*. As such, and according to section 38(6) the Landlord must pay the Tenant double the security deposit.

As discussed during the hearing, security deposits are special funds in that they are trust funds and are to be 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 an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, the Landlord 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. In this

case the Landlord did not have any such authority to keep any portion of the security deposit.

In this case the Landlord returned the sum of \$225.00 to the Tenant. Consideration must therefore be made for this payment when calculating the Tenant's entitlement.

Guidance can be found in *Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* which 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. In this case the Tenant paid a \$400.00 security deposit and the Landlord withheld \$175.00 without the Tenant's written permission or an Order from the Residential Tenancy Branch. As such, I double the amount paid, $\$400.00 \times 2 = \800.00 and then I deduct the \$225.00 which was already returned, such that the Tenant is entitled to a further **\$575.00**.

Having been successful in her Application, I also award the Tenant recovery of the \$100.0 filing fee for a total award of **\$675.00**.

As I have found the Tenant is entitled to double her security deposit pursuant to section 38(1) and (6) I find it unnecessary to consider whether either party extinguished their right to claim the deposit pursuant to sections 24 and 36 of the *Act*. The parties are reminded that condition inspections must comply with Part 3 of the *Residential Tenancy Regulation*.

Conclusion

The Tenant's application for return of her security deposit and recovery of the filing fee is granted. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$675.00**. 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: October 01, 2020

Residential Tenancy Branch