



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNSDB-DR

Introduction

In the first application the landlord seeks to recover \$500.00 of unpaid rent.

In the second application the tenants seek to recover the remainder of a security deposit and a pet damage deposit.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the landlord wrongly refuse or return payment of the \$500.00 from a government rent subsidy program? If so is it still owed by the tenants? What portion of the tenants' deposit money is owed to them? Is the doubling penalty imposed by s. 38 of the *Residential Tenancy Act* (the "RTA") applicable in the circumstances?

Background and Evidence

This tenancy started in December 2019. The tenants gave notice and vacated the property on July 31, 2020. The monthly rent was \$2200.00, due on the first of each month. The landlord received a \$1100.00 security deposit and a \$500.00 pet damage deposit.

The parties participated in a move out inspection and signed a move out condition report on July 31, 2020. The tenants agreed in writing the landlord could retain \$350.00 from the security deposit and \$0.00 from the pet damage deposit.

At that time the tenants owed the landlord about \$1000.00 for rent. The tenants had promised the landlord a \$200.00 payment, a \$300.00 payment and then a final \$500.00 payment for the arrears through the BC Housing "BC Temporary Rental Supplement Program" providing rent relief during the present Covid-19 epidemic. The \$200.00 and the \$300.00 were paid.

The \$500.00 payment was to come from a government program as well.

The tenant EK testifies that the program money was technically for rent for the months of April and May 2020, but that when she made the application in July (grants were made for two month rental periods at a time, \$500.00 for each month) she was told that she could apply the money for rent for the month of July and August.

EK acknowledges that at the time she made the application she did not anticipate she would be vacating the property at the end of July.

EK testifies that the money was to be sent directly to the landlord and that the landlord refused it, considering it to be illegal money because it was for the months of July and August but the tenants didn't rent the unit in August. Ms. E.K.

The tenant BP testifies that it was clear between the tenants and the landlord that though the tenants' application was for a subsidy for rent relief for the months of May and June, the money would be applied for unpaid rent for July.

The landlord CU testifies that she did not cancel the subsidy payment. She testifies that when it had not arrived she contacted BC Housing about it and, in the course of the conversation, told BC Housing the tenants were moving out at the end of July.

She says she received the \$500.00 but that BC Housing demanded she return it, apparently because it was issued for a rent subsidy for August and the tenants had vacated in July. They told her there was no "back pay" and that it was "illegal" to pay the money. She returned the money and brought this application.

After the move out, in the first days of August, the landlord attempted to return \$554.80 by e transfer to the tenants as their "damage deposit." It appears the landlord thought

that: a) she held a total of \$1600.00 in deposit money, b) the tenants had consented in the move-out report to her keeping \$350.00 for repairs, c) she was expecting but had not received \$700.00 from the government rent supplement (the \$500.00 and an earlier \$200.00), d) she would therefore hold \$700.00 of the total deposit money until the supplements came in and, in the meantime, pay the tenants the balance of \$550.00, plus about \$4.80 in interest.

The tenants refused it as they had authorized the landlord to keep \$350.00 from the security deposit and felt that accepting anything less than the full balance might be an admission of some kind.

Analysis

The Rent

I have not considered the emails from the supplement program that were submitted by the landlord requiring her to return money. They were not referred to by her at hearing and the tenants' attention was not brought to them for an opportunity for them to comment.

The evidence satisfies me that the landlord is owed \$500.00 for outstanding rent. I consider it unlikely that the landlord would take it upon herself to determine the legality of the tenants' supplement application and decline the payment. The burden of proof of that allegation lies upon the ones asserting it, the tenants in this case, and there is no evidence to corroborate their unlikely scenario. I find it more likely that the supplement office received the landlord's innocent comment about the tenants moving out and conducted its own analysis then demanded the money be returned.

The Deposit Money

Section 38 of the *RTA* provides that once a tenancy has ended and once the landlord has been given a tenant's forwarding address in writing (both dates being July 31, 2020 in this case), then the landlord has a fifteen day window to either a) repay any security deposit or pet damage deposit, or b) make an application claiming against the security deposit or the pet damage deposit.

A landlord who fails to meet that fifteen day window must account to her tenants for double the security deposit or pet damage deposit, as the case may be.

While a security deposit stands as security for all a tenant's obligations under the law or the tenancy agreement, namely, rent, damage, cleaning costs, ... etc., a landlord can only claim against a pet damage deposit for damage to the rental unit caused by a pet. There is no claim, allegation or evidence of any damage caused by a pet in this case.

Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that if the circumstances engage section 38 and the doubling penalty, then an arbitrator is to award the doubling even when a tenant has not applied for it, unless the tenant declines the doubling at hearing. The question was put to the tenants at this hearing and they declined to waive the doubling penalty.

There is some confusion in this case because, when the tenancy was ending, the parties seem to have referred only to the "damage deposit." A damage deposit does not exist in the landlord and tenant law of BC. The *RTA* which governs all residential tenancies in the province permits only "security deposits" and "pet damage deposits." Anything in between, say a "car parking deposit" would fall under the definition of "security deposit" in the *RTA*.

And so, when this landlord returned \$554.80 of the "damage deposit" at the start of August, it is not clear what deposit she was returning. She was not entitled to retain any of the \$500.00 pet damage deposit because there was no pet damage. She was entitled to hold the full \$1100.00 of security deposit money against unpaid rent and she continued to be entitled to hold the full amount of the security deposit until the hearing of this matter because she had made this application well within the 15 day period set out in s. 38.

Keeping in mind that the imposition of a penalty should only be done on the clearest evidence, I find that the landlord's e-transfer of \$554.80 during the first days of August was the equivalent of returning the tenants' \$500.00 pet damage deposit. The transfer appears to have been unconditional, that is, there were no terms imposed by the landlord for its acceptance, like "if you accept this transfer it is in full satisfaction of all claims you may have for the return of the balance of the deposit money." In my view the tenants should have taken the money.

I find that the doubling penalty imposed by s. 38 of the *RTA* does not apply to the facts of this case.

Conclusion

The landlord is entitled to an award of \$500.00 for unpaid rent, plus recovery of the \$100.00 filing fee. I authorize her to keep the sum of \$600.00 from the deposit money she holds.

The tenants will have a monetary order against the landlord for the remainder of \$650.00 of deposit money.

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: November 30, 2020

Residential Tenancy Branch