



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT, MNDCT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on November 27, 2020 where the Tenants sought return of double their security and pet damage deposit in addition to recovery of the filing fee. By Amendment filed April 19, 2021, the Tenants also sought to claim \$6,336.80 compensation for losses associated with water damage at the rental unit.

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on May 3, 2021. Both parties called into the hearing. The Tenants were also assisted by the Tenant's father, K.L., who advised he was a retired lawyer. 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 were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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—Tenant's Amendment

The Tenants filed their Amendment on April 19, 2021, only 13 days prior to the hearing. Initially the Landlord's representative advised he was prepared to go ahead with the hearing of both the original claim and the Tenants' Amended claim, however he then advised he did not receive all of the Tenants' evidence filed in support of that claim.

I find the Landlord was given insufficient notice of the additional claims set forth in the Amendment, and were not provided with all of the Tenants evidence. I therefore dismiss with leave to reapply the monetary claim contained in the Tenants' amendment filed April 19, 2021. I note this does not extend any time limits imposed by the *Act*.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on May 3, 2021. This Decision was rendered on June 10, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Are the Tenants entitled to return of their security and pet damage deposit?
2. Should the Tenants recover the filing fee?

Background and Evidence

In support of their claim, the Tenant, C.L., testified as follows. He confirmed that they originally moved into another unit on September 15, 2018; however, a water leak started in that unit in May 27, 2020 and by agreement, the Tenants moved the subject rental unit into August 24, 2020. The agreement further provided that the Tenants were to be in the subject rental until the end of September, however, they stayed until the end of October 2020. The parties participated in a move out inspection November 4, 2021.

The Tenants provided the Landlord with their forwarding address on November 4, 2021 when they completed the move out condition inspection. The Tenants confirmed that the Landlord did not return their deposits and did not make an application for dispute

resolution. The Tenant further confirmed that they did not agree to the Landlord retaining those funds. The Tenant further confirmed that the Landlord was not authorized to retain the funds by Order of the Residential Tenancy Branch.

The Tenant stated that in late November, he had email communication with D.B., the Landlord's representatives. D.B. stated that there was an outstanding balance for B.C. Hydro. On December 4, 2021 the Landlord returned the Tenants deposits of \$1,900.00 less \$168.18 for a total of \$1,731.82. The Tenant stated that they did not agree the Landlord could retain the \$168.18, nor did the Landlord obtain an Order for this deduction.

In response the Landlord's representative, D.B. testified that the Tenants vacated the rental unit on October 31, 2020. D.B. stated that the condition inspection occurred on November 4, 2020 due to D.B.'s request as he was busy dealing with month end. He confirmed the Landlord did not intend to re-rent the subject rental unit for November 1, 2020.

D.B. confirmed that he received from the Tenants a \$950.00 security deposit and a \$950.00 pet damage. D.B. confirmed that he received the Tenants' forwarding address on November 4, 2020. D.B. further confirmed that he did not apply for dispute resolution, but he did return the sum of \$1,731.82 to the Tenants.

D.B. stated that based on the original agreement, the Tenants were responsible for B.C. Hydro, such that the Landlord deducted \$168.18. D.B. confirmed that the Tenants did not agree that the Landlord could retain those funds.

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 Tenants applies for return of double their security and pet damage 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 Tenants' evidence that they did not agree to the Landlord retaining any portion of their security or pet damage deposit.

I find that the Landlord received the Tenants' forwarding address in writing on November 4, 2020. Section 38(1) provides that the Landlord must return the deposits 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.

The evidence confirms that the Landlord failed to return the Tenant's deposits or apply for dispute resolution by November 19, 2020 as required under section 38(1) of the *Act*. As such, and according to section 38(6) the Landlord must pay the Tenants double the deposits.

As discussed during the hearing, security and pet damage deposits are special funds in that they are trust funds and are to be held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the deposits through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenants, the Landlord 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' deposits. In this case the Landlord did not have any such authority to keep any portion of the Tenants' deposits.

In this case the Landlord returned the sum of \$1,731.82 to the Tenants and retained \$168.18 without the Tenants' consent. Consideration must therefore be made for this payment when calculating the Tenants' 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.

I find that the case before me most closely resembles Example A above. In this case the Tenants paid \$1,900.00 as a security deposit and pet damage deposit and the Landlord withheld \$168.18 without the Tenants' written permission or an Order from the Residential Tenancy Branch. As such, I double the amount paid, $\$1,900.00 \times 2 = \$3,800.00$ and then I deduct the \$1,731.82 which was already returned, such that the Tenants are entitled to a further **\$2,068.18**.

As the Tenants have been successful in this Application, I also award them recovery of the \$100.0 filing fee for a total award of **\$2,168.18**.

Conclusion

The Tenants' Application for monetary compensation pursuant to their Amendment filed on April 19, 2021, is dismissed with leave to reapply.

The Tenants' application for return of double their security and pet damage deposit and recovery of the filing fee is granted. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$2,168.18**. 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: June 10, 2021

Residential Tenancy Branch