



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL
MNSDS-DR, FFT

Introduction

This hearing convened as a result of Cross Applications. In the Landlord's Application, filed on February 12, 2021, the Landlord sought monetary compensation from the Tenant in the amount of \$2,950.00, authority to retain their security deposit and recovery of the filing fee. In the Tenant's Application, filed on April 11, 2021, the Tenant sought monetary compensation from the Landlord, including return of double the security deposit and recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for 1:30 p.m. on June 29, 2020. Only the Tenant called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:40 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that they served the Landlord with the Notice of Hearing and the Application on April 22, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of April 27, 2021 and I proceeded with the hearing in their absence.

The Tenant was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Tenant confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Application

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rules 7.1, 7.3 and 7.4* address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlord bears the burden of proving their claim on a balance of probabilities. In the absence of any evidence or submissions from the Landlord and in the absence of the Landlord's participation in this hearing, I dismiss the Landlord's claim without leave to reapply. I make no findings on the merits of the Landlord's claims.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord including return of double their security deposit?
2. Should the Tenant recover the filing fee paid for their Application?

Background and Evidence

This tenancy began September 1, 2020. Monthly rent was \$2,100.0 and the Tenant paid a \$1,050.00 security deposit. The Tenancy ended on January 31, 2021.

The Tenant testified that he provided the Landlord with his forwarding address on April 27, 2021. The Landlord did not return the deposit and made an application for its retention on February 12, 2021.

The Tenant confirmed that he did not authorize the Landlord to retain any portion of his deposit. He stated that while he sought return of double the deposit paid, he was agreeable to the Landlord retaining \$130.00 from his deposit as a "cleaning fee".

The Tenant also sought \$2,000.00 for "anxiety" and the "monetary value of time requirement".

Analysis

The Tenant seeks return of double his deposit pursuant to section 38 of the 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 Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that they did not agree to the Landlord retaining any portion of their \$1,050.00 security deposit.

I find that the Landlord received the Tenants forwarding address in writing on April 27, 2021.

While the Landlord applied for dispute resolution, the Landlord failed to attend the hearing such that their application has been dismissed.

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 or an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they 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 Tenant's security deposit. Here the Landlord does not have any authority under the *Act* to keep any portion of the security deposit.

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 **\$2,100.00**, comprised of double the security deposit (2 x \$1,050.00).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Although legal proceedings, such as hearings before the Residential Tenancy Branch, are stressful for participants, general claims such as the Tenant's claim for \$2,000.00 for anxiety are generally not recoverable unless the Tenant can prove the four elements noted above. In this case I find the Tenant has failed to support such a finding.

Similarly, parties are not entitled to recover compensation from the other party for time spent preparing for hearings before the Branch. As such, I dismiss the Tenant's monetary claim for \$2,000.00.

As the Tenant has been largely successful in his Application, I also award him recovery of the \$100.00 fee for filing this Application for a total award of **\$2,200.00**.

During the hearing the Tenant stated that he was agreeable to the Landlord retaining \$130.00 as a cleaning fee. I therefore discount the amount payable to the Tenant by

\$130.00 such that the Tenant is entitled to a Monetary Order in the amount of **\$2,070.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord failed to call into the hearing such that their Application is dismissed without leave to reapply.

The Tenant's application for return of double their security deposit and recovery of the filing fee is granted.

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: July 14, 2021

Residential Tenancy Branch