



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 19, 2021, wherein the Tenant sought monetary compensation from the Landlords in the amount of \$5,733.87 including return of double her security deposit.

The hearing was conducted by teleconference at 1:30 p.m. on August 20, 2021. 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 Monetary Claim

At the outset of the hearing the Landlord, M.B., stated that he was unclear as to the Tenant's \$5,133.87 monetary claim. Although the Tenant wrote that this related to a dog bite, the Tenant did not provide a breakdown of the amounts claimed, nor did she provide sufficient particulars of this portion of her claim.

One of the principles of Natural Justice is that a party to a dispute has the right to know the claim against them. In this case, I find the Tenant failed to provide sufficient details to the Landlords such that the Landlords could not "know" the claim or reasonably respond to the claim. I therefore dismiss, with leave to reapply, the balance of the Tenant's monetary claim.

Issue to be Decided

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

Background and Evidence

The Tenant testified that she moved into the rental unit on July 1, 2020. She paid \$1,200.00 in rent. She also paid a \$600.00 security deposit on July 1, 2020.

The tenancy ended on March 4, 2021. The Tenant testified that she provided her forwarding address to the Landlords by posting to the Landlords' door on March 9, 2021. The Tenant provided a copy of photo of the letter provided to the Landlord on that date.

The Tenant testified that the Landlord did not return her security deposit, nor did the Landlord make an application for an Order to retain those funds. The Tenant also confirmed that there was no Order from the Residential Tenancy Branch dealing with these funds.

The Landlord, M.B., testified as follows. He confirmed the Tenant paid a \$600.00 security from the Tenant. He further confirmed that the Tenant failed to give proper notice to end her tenancy and moved out a few days after the beginning of the month of March; such that the Landlords retained her deposit.

Analysis

The Tenant applies for return of her 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 Landlords retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address in writing on March 12, 2021, three days after it was posted to their door on March 9, 2021 and pursuant to section 90 of the *Residential Tenancy Act* (the "*Act*").

I find that the Landlords 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 Tenant, as required under section 38(1) of the *Act*.

As discussed during the hearing, the security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants or an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, for loss of rental income or otherwise, 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 Tenants' security deposit. Here the Landlords did 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 Landlords pay the Tenant the sum of **\$1,200.00**, comprised of double the security deposit (2 x \$600.00).

Conclusion

The Tenant's application for return of double her security deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$1,200.00.** The Tenant must serve a copy of the Order on the Landlords as soon as possible, and should the Landlords 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.

The balance of the Tenant's monetary claim is dismissed with leave to reapply. This does not extend any time limitations imposed by the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 20, 2021

Residential Tenancy Branch