



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation against their former tenant pursuant to sections 67 and 72(1) of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing, including a family member who provided support for the tenant. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: No Right to Claim Against Security Deposit by Landlord

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the preliminary issue of this dispute is reproduced below.

The tenancy began on September 1, 2020 and ended on April 1, 2021. The tenant paid a \$450.00 security deposit. This deposit is currently held in trust pending the outcome of this dispute. There is a copy of a written tenancy agreement in evidence.

The landlord has made an application for dispute resolution claiming \$358.89 in compensation (excluding the cost of the filing fee) against the tenant's security deposit for alleged damaged to the residential property. During the hearing, the parties did not dispute the fact that the landlord did not at any point during the tenancy complete a condition inspection report at the start of the tenancy.

[Section 23](#) of the Act sets out the legal requirements for landlords to complete a condition inspection report at the beginning of a tenancy. Subsection 23(4) of the Act states that "The landlord must complete a condition inspection report in accordance with the regulations." There is no disputing the fact that this was not done.

The reasons given by the landlord as to why she did not complete an inspection at the start of the tenancy are not particularly convincing. For example, the landlord's reference to the tenant's social anxiety and "not wanting to give her a hard time about it" are insufficient reasons for not complying with the Act.

Subsection 24(2) of the Act states that

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this dispute, based on the oral and documentary evidence before me, I find that the landlord did not complete a condition inspection report in compliance with the regulations. Specifically, [Part 3](#) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003. Thus – and notwithstanding that the tenant admitted to causing *some* damage – the right of the landlord to claim against the tenant's security deposit for any such damage to the rental unit is extinguished, and her claim cannot proceed.

Accordingly, the landlord's application is dismissed, with leave to reapply. What this means is that the landlord may make another application for dispute resolution claiming compensation from the tenant, but they are not entitled to claim against the tenant's security deposit, which must (as explained below) now be returned.

Pursuant to section 38(1)(c) of the Act, the landlord is ordered to return the tenant's security deposit, in the full amount of \$450.00, within 15 days of receiving this decision. To give effect to this order, the tenant is granted a monetary order which, if the landlord does not return the security deposit, may be enforced in the Provincial Court of British Columbia.

A copy of the monetary order is issued in conjunction with this decision, to the tenant, and the tenant must serve a copy of the monetary order to the landlord within 15 days of receiving this decision.

Last, I note that tenant has made her own application for dispute resolution seeking the return and doubling of the security deposit. The tenant is strongly encouraged to review section 38(1) of the Act, which states that a landlord must, within 15 days of the tenancy ending, either return the security deposit or make an application for dispute resolution claiming against the security deposit. It is only when a landlord fails to comply with section 38(1) of the Act that a tenant may be entitled to a doubled amount of that security deposit. See [section 38\(6\)](#) of the Act.

The tenancy in this dispute ended on April 1 and the landlord filed their application on April 1. Thus, it is unlikely that the tenant has a legal claim for a doubling of the security deposit. While I make no findings regarding the merits of the tenant's application for dispute resolution, the tenant may wish to consider the above-noted sections of the Act before proceeding further with her application.

Conclusion

The landlord's application is dismissed, with leave to reapply.

The landlord is hereby ordered to return the tenant's security deposit, in full, within 15 days of receiving a copy of this decision.

The tenant is granted a monetary order in the amount of \$450.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 1, 2021

Residential Tenancy Branch