



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCDT MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for monetary order of \$8,850.00 for compensation for loss of quiet enjoyment, for the return of double their security deposit and pet damage deposits (combined deposits) plus the recovery of the cost of the filing fee.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 19, 2021 (Notice of Hearing), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on May 20, 2021. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord. For ease of reference, the registered mail tracking number has been included on the style of cause.

According to the Canada Post online registered mail tracking website, the landlord signed for and accepted the registered mail package on May 27, 2021. As a result, I find the landlord was served with the Notice of Hearing, application and documentary evidence on May 27, 2021, which was the date the landlord signed for and accepted the registered mail package. As the landlord was served and did not attend the hearing, I consider this matter to be undisputed by the landlord and the hearing proceeded without the landlord present in accordance with the Residential Tenancy Branch (RTB) Rules of

Procedure (Rules) Rules 7.1 and 7.3. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The tenant was informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The tenant was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the tenant was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The tenant had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The landlord's email address was corrected during the hearing pursuant to section 64(3)(c) of the Act. The decision will be emailed to the landlord.

The tenant was also advised that the loss of quiet enjoyment portion of their application was being refused, pursuant to section 59(5)(c) of the Act because their application for dispute resolution did not provide sufficient particulars of how they arrived at the amount being claimed including sufficient details of this portion of their application in their original application served on the landlord.

As a result, I find that proceeding with the tenant's monetary claim at this hearing related to loss of quiet enjoyment would be prejudicial to the landlord, as the absence of specific particulars that set out how the tenant arrived at the amount claimed in the application details makes it difficult, if not impossible, for the landlord to adequately prepare a response to the tenant's claim. As a result, the tenant is at liberty to reapply; however, is reminded to provide a detailed breakdown of their monetary claim and are encouraged to use the Monetary Worksheet available at <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms> when submitting a monetary claim. The tenant may include any additional pages to set out the details of their dispute in their application, as required.

Considering all of the above, this hearing proceeded with consideration of the tenant's application for double the combined deposits and the filing fee.

Issues to be Decided

- Is the tenant entitled to the return of double their combined deposits under the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant testified that there was no written tenancy agreement. The tenant affirmed that a month-to-month verbal tenancy agreement was formed, which began on October 1, 2020 and that monthly rent was \$1,200.00 per month and due on the first day of each month. The tenant stated that they vacated the rental unit on March 9, 2021 after giving written notice to end the tenancy on February 18, 2021, indicating that the tenant would be vacating the rental unit on March 31, 2021. The tenant affirms that they paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 at the start of the tenancy, which the landlord continues to hold (\$1,200.00 combined deposits).

The tenant affirmed that they served the landlord with their written forwarding address on March 10, 2021 by hand at approximately 2:00 p.m. on March 10, 2021 via personal service. The tenant testified that the landlord has not returned any portion of the combined deposits of \$1,200.00. The tenant also stated that they have not been served with any application from the landlord making a claim against the combined deposits. The tenant testified that they did not give any written permission for the landlord to deduct any amount from the combined deposits.

The tenant is seeking \$2,400.00 for double the combined deposits plus the \$100.00 filing fee.

Analysis

Based on the above, and the undisputed documentary evidence before me and undisputed testimony of the tenant, and on a balance of probabilities, I find the following.

The tenant confirmed that they did not provide permission for the landlord to retain any portion of their \$1,200.00 combined deposits. I am also satisfied that the tenant provided their written forwarding address via personal service on March 10, 2021 to the landlord. Therefore, I find the landlord was served with the tenants' written forwarding address as of March 10, 2021.

I accept the tenants undisputed testimony that the landlord has not returned any amount of their combined deposits. As a result, section 38 of the Act applies and states:

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.**
- (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.**

[emphasis added]

Based on the above, I find the landlord has breached section 38 of the Act by failing to return or claim against the tenant's combined deposits. In reaching this finding I have considered that there is no evidence before me that the landlord applied to return the combined deposits or had written permission to retain any amount of the combined deposits.

Both deposits are held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep either deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the combined deposits through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the combined deposits and did not return either deposit to the tenant within 15 days of March 10, 2021 as required by the Act.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the combined deposits. The legislation does not provide any flexibility on this issue.

As a result, I find the tenant has met the burden of proof and I grant the tenant **\$2,400.00**, which is double their original \$600.00 security deposit, and double their original \$600.00 pet damage deposit pursuant to section 67 of the Act. In addition, I grant the tenant **\$100.00** pursuant to section 72 of the Act, for the recovery of the cost of the filing fee. Given the above, I find the tenant has established a total monetary claim of **\$2,500.00**.

I caution the landlord not to breach section 38 of the Act in the future.

Conclusion

The tenant's application that was not severed is fully successful.

The severed portion of the tenant's application is dismissed with leave to reapply.

The landlord has been cautioned not to breach section 38 of the Act in the future.

The tenant is granted a monetary order in the amount of \$2,500.00 for double the combined deposits plus the filing fee as described above.

The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is cautioned that they could be held liable for all costs related to enforcement of the monetary order.

The decision will be emailed to the parties.

The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 8, 2021

Residential Tenancy Branch