



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
Services and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on September 3, 2021. The tenant provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing on September 8, 2021, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to the monetary order requested?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this month-to-month tenancy began on July 1, 2018, and ended on July 31, 2021. Monthly rent was set at \$1,500.00, payable on the first of every month. The tenant testified that the landlord had collected a security deposit in the amount of \$512.50, plus a key deposit. The tenant testified that they provided a forwarding address on June 29, 2021 requesting the return of their deposit, but has not received any portion back. The tenant is requesting that the landlord return the deposit less \$390.00 for cleaning and repairs. The tenant also noted that a key deposit was paid to the landlord. The tenant provided a copy of the move-out letter which includes the tenant's forwarding address and request for the return of their security deposit.

The tenant is also seeking reimbursement of the entire July 2021 rent for the landlord's failure to address a rodent problem in the rental unit. The tenant submitted requests to the landlord on June 28 and June 29, 2021.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

I find it undisputed that the tenant had provided their forwarding address to the landlord on June 20, 2021, and has not received any portion of their security deposit back from the landlord, nor has the landlord filed an application to retain any portion of the tenant's security deposit. The tenant is requesting the return of their security deposit less \$390.00 for cleaning and repairs.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application and calculation of applicable monetary awards:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- *any arbitrator's monetary order outstanding at the end of the tenancy;*
- *any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit(see example B below);*
- *if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.*

Example C in the Policy guideline illustrates how a security deposit may be doubled when an amount has previously been deducted from the deposit:

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).

As the tenant agreed to a deduction of \$390.00 from the original deposit of \$512.50, and as the landlord failed to file a claim against the remaining portion of the deposit within 15 days of the provision of the tenant's forwarding address, I find that the tenant is entitled to double the amount that remaining after the authorized deduction ($\$512.50 - \$390.00 = \$122.50 \times 2 = \245.00).

The tenant also referenced a key deposit. I note that the documents submitted do not clearly support the amount that was paid or returned in relation to the key deposit. Accordingly, I dismiss any claims in relation to the key deposit with leave to reapply.

The tenant also requested the return of their July 2021 rent for the landlord's failure to address the rodent problem in their rental unit. In this case, the tenant has requested the equivalent of one hundred of the entire month's rent for July 2021.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

As noted above, the onus is on the tenant to support the losses claimed. Although I acknowledge the concerns raised by the tenant in regard to this tenancy, I find that the evidence presented by the tenant does not sufficiently support the losses claimed. I find that he failed to support how the tenant had calculated the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damage or losses the tenant is seeking in this application. On this basis I dismiss the tenant's monetary claim without leave to reapply.

I allow the tenant to recover the \$100.00 for this application.

Conclusion

The tenant is provided with a monetary order in the amount of \$345.00. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's claim in relation to the key deposit is dismissed with leave to reapply.

I dismiss the remainder of the tenant's application without leave to reapply.

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: March 10, 2022