



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

The hearing was conducted by teleconference. The tenant attended. AK attended as agent and son of the named Respondent, RSK.

The hearing process was explained, and the attendees had the opportunity to ask questions, make submissions, present documentary evidence, and call witnesses.

The parties confirmed they were not recording the hearing. They also confirmed the email addresses of the parties to which the Decision and any Order shall be sent.

AM acknowledged service by the tenant of the Notice of Hearing and Application for Dispute Resolution upon RSK. RSK submitted no documents.

Preliminary Issue

AK stated RSK is his father and does not speak English well; AK attended to act for him. AK and his father were present for the full duration of the hearing, confirmed service of the tenant's application and evidentiary materials, and were provided a full opportunity to participate in the hearing. During the hearing, AK referred questions to RSK from time to time and then provided the answers.

At the outset, the agent AK denied that RSK was the landlord.

The tenant testified she only ever had dealings or communication related to the tenancy with RSK (the named landlord) and his wife.

The parties agreed the tenancy was verbal.

The tenant testified as follows. RSK showed the tenant the unit and accepted the first month's rent and security deposit from her. RSK received cash payments of rent in cash several times from the tenant. RSK is listed as one of four owners of the property on the Two Month Notice issued to the tenant dated March 30, 2021, a copy of which was submitted.

The agent AK testified as follows. He confirmed the veracity of the tenant's above testimony. However, he could not confirm RSK signed the Notice as AK was unable to find a copy. He said RSK owns a small interest in the building in which the unit is located; AM testified his ownership is 1%. As stated, RSK submitted no documents.

AK asserted that the proper person to name as the landlord is RSK's brother and wife who owned the majority interest in the building in which the unit was located.

AK submits that it is an obvious error that RSK is a named respondent. He requested the application be dismissed.

As provided in section 1 of the *Act* a landlord includes the owner of the rental unit, the owner's agent or another person who, on behalf the landlord exercises powers and performs duties under the tenancy agreement. The *Act* further provides that landlord includes a former landlord, when the context requires.

Section 1 states:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

In the present circumstance I find that the RSK meets the definition of landlord under the Act as he is a part owner of the building in which the unit is located, entered into the verbal tenancy agreement with the tenant to rent the unit, and accepted rent and the security deposit. RSK acted like the landlord and the tenant concluded he was the landlord.

I find RSK is an appropriate party to be named as the respondent in the application. I find no error in their inclusion as a named respondent and refer to RSK's authorized agent AK as "the landlord".

Preliminary Issue – Doubling

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and an award for the return of doubling of the security deposit?

Background and Evidence

Background

The parties agreed as follows.

1. The parties entered into a verbal monthly tenancy agreement for a basement suite which started on December 29, 2020.
2. Rent was \$900.00 monthly and was paid in cash to the landlord or his spouse.
3. The tenant paid a security deposit to the landlord of \$450.00 in cash.
4. The landlord issued a Two Month Notice to the tenant dated March 30, 2021. The tenant acknowledged service. The tenant received compensation of one month's rent. The tenant accepted the Notice and moved out on May 29, 2021.
5. The tenant provided written notice of her forwarding address to the landlord on the last day of the tenancy, May 29, 2021.

Condition Inspection Report

The tenant testified that no condition inspection report was conducted on moving in or moving out.

No signed inspection report was submitted.

Two Month Notice

The tenant testified the landlord was one of the named four landlords in the Notice, a copy of which she submitted showing RSK's name.

Reason for Failure to Return Security Deposit

The landlord explained he has not returned the security deposit because the tenant damaged the unit and had more pets than permitted. The landlord denied the tenant was entitled to the return of the security deposit.

The landlord testified they have not brought an application to retain the security deposit.

The tenant testified she left the unit in better shape than it was when she moved in and submitted a letter of support for that assertion from a friend who accompanied her as she cleaned and vacated.

Tenant's Claim – Compensation for Cable

The tenant testified the landlord agreed to provide her with cable as part of the agreement. However, the landlord did not do so. The tenant purchased a cable box from the landlord for \$135.00 and pay \$5.00 monthly for 5 months for the service. All payments were in cash and the landlord did not issue receipts. The tenant requested a Monetary Order of \$210.00 for reimbursement of these charges. She submitted no supporting documentary evidence.

The landlord denied the obligation to provide cable or that he should reimburse the tenant.

Summary

The tenant requested a Monetary Order for the doubling of the security deposit and the reimbursement of \$210.00.

The landlord requested the Application for Dispute Resolution be dismissed.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence in all aspects with respect to the security deposit.

I find the tenant has not waived their right to obtain a payment pursuant to section 38 of the *Act*.

I accept the tenant's evidence supported by the landlord's acknowledgement that the tenant gave the landlord written notice of their forwarding address on May 29, 2021.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of doubling of the security deposit.

Reimbursement of Cable Expenses

The tenant has submitted no evidence in support of any requirement of the landlord to provide cable. She has also not submitted proof of payment of the expenses for which she claims reimbursement.

I find the tenant has not met the burden of proof that she incurred these expenses, that the landlord was required to provide this service, or that the service cost the amount she claimed.

Accordingly, I dismiss this aspect of the claim without leave to reapply.

Summary

I award the tenant a Monetary Order for the doubling of the security deposit of \$450.00 for a total award of \$900.00.

The tenant did not request reimbursement of the filing fee.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$900.00** as described above.

This Monetary Order must be served on the landlord. If the landlord fails to comply with this Monetary Order, the tenant may file and enforce the Order in the Courts of BC.

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: September 26, 2022

Residential Tenancy Branch