



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

In this application for dispute resolution, the tenant applied on March 31, 2022 for:

- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

The hearing was attended by the tenant and the landlord's representative ("the landlord"), who were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other's hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to a monetary order for the return of the security deposit?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began July 1, 2021 and ended on January 30, 2022; rent was \$1,800.00, due on the first of the month, and the tenant paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. The landlord has returned \$700.00 to the tenant, retaining \$1,100.00.

The tenant testified she has not cashed the landlord's cheque.

The tenancy agreement indicates the tenancy is for a fixed term, ending on June 30, 2022.

The parties agreed that move-in and move-out inspections were completed, and copies of the reports were provided to the tenant, and that the tenant provided a forwarding address in writing on January 30, 2022, by email.

The tenant testified that she did not authorize the landlord in writing to keep any part of the security deposit or pet damage deposit. The landlord testified that the tenant did authorize in writing that the landlord could keep part of the deposits, and referred me to an email dated January 25, 2022, submitted as evidence. The email is from the tenant to the landlord, indicates that the tenant will be ending the tenancy agreement early, and includes: "I understand that there is an [sic] \$1100 fee to break [the tenancy agreement], I can arrange for that."

The landlord submitted they seek to "keep the liquidated damage cost of \$1100" because the tenant ended the tenancy early, but there is no application from the landlord before me. It appears the landlord has not made an application to the Residential Tenancy Branch (RTB) or served a Notice of Dispute Resolution Proceeding on the tenant related to the amount sought. I advised the landlord that if they wish to apply for a monetary claim, they must submit an application to the RTB and serve the tenant.

Analysis

Section 38(1) states:

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.

Section 38(4) permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Section 38(6) states:

- (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.

The parties agreed that the tenant provided the landlord with her forwarding address in writing on January 30, 2022, by email. I deem the tenant's forwarding address received by the landlord on February 2, 2022, pursuant to section 44 of the regulation.

The parties agree that the landlord has returned \$700.00 to the tenant, retaining \$1,100.00 of the tenant's deposits.

The tenant testified that she did not agree in writing that the landlord may keep any portion of the deposits; the landlord testified she did, referencing the statement from the tenant's January 25, 2022 email: "I understand that there is an [sic] \$1100 fee to break [the tenancy agreement], I can arrange for that."

In the statement above, the tenant indicates to the landlord that she understands there is a financial cost to ending the tenancy early, and that she has the ability to pay the landlord accordingly. As this statement does not unequivocally convey that the landlord may retain any of the security or pet damage deposits, I disagree with the landlord's position, and find that the tenant did not agree in writing that the landlord may keep a portion of either deposit.

As the landlord has not repaid or made a claim against the deposits within 15 days of receiving the tenant's forwarding address in writing, I find the landlord is required to pay the tenant double the amount of the \$900.00 security deposit and \$900.00 pet damage deposit, less the \$700.00 the landlord returned to the tenant, for a total of \$2,900.00:

$$\text{\$1,800.00} \times 2 = \text{\$3,600.00}$$

$$\text{\$3,600.00} - \text{\$700.00} = \text{\$2,900.00}$$

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of \$3,000.00, comprising \$2,900.00 for the doubled security and pet damage deposits less the amount returned by the landlord, and \$100.00 for the filing fee.

Conclusion

The tenant is granted a monetary order for \$3,000.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 25, 2022

Residential Tenancy Branch