



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord PKA and tenant JN appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The landlord acknowledged receipt of the tenant’s dispute notice and supporting materials and I find the landlord duly served in accordance with sections 88 and 89 of the Act. The landlord advised that he did not provide any materials in evidence.

Preliminary Issue

At the outset of the hearing the landlord advised that his last name was spelled incorrectly on the dispute notice. I amend the landlord’s name accordingly pursuant to section 64(3)(c) of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?

2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced March 5, 2021. Rent was \$1,550.00 per month due on the first of the month and a security deposit of \$700.00 is currently held by the landlord. The tenant vacated the rental unit on August 31, 2022.

The parties agreed that no move in condition inspection report (CIR) was completed upon the tenant taking occupancy of the rental unit and that no move out CIR was completed at the end of the tenancy. The parties agreed that the landlord still retains the security deposit. The landlord's position is that the rental unit sustained damage due to the tenant's occupancy and for that reason he has not returned the security deposit.

The tenant provided a copy of the form in evidence that she mailed to the landlord on September 8, 2022, containing her forwarding address. The landlord did not dispute that the tenant provided him a forwarding address.

Analysis

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Section 24 requires the landlord and tenant together to complete a move in CIR on the day the tenant takes possession of the unit or on another mutually agreed upon day. The landlord's right to claim against the security deposit is extinguished if he does not provide the tenant with two opportunities to participate in the inspection. Further RTB Policy Guideline 17 states in part:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or

- having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

Both parties agree that the landlord did not complete a move in inspection and did not complete a move in CIR. The undisputed evidence of the tenant is that she was not offered an opportunity to participate in a move in inspection. Therefore, I find the landlord's right to claim against the security deposit is extinguished. As the landlord did not offer the tenant an opportunity to participate in a move in inspection, the tenant has not extinguished her rights under section 24 of the Act.

The tenant has sought the return of double the amount of the security deposit, and an additional cleaning fee of \$50.00 representing an oven cleaning fee.

Based on the undisputed evidence of the tenant, I find the tenant provided her forwarding address to the landlord by mailing it on September 8, 2022. Section 88 of the Act allows the tenant to provide her forwarding address by mail, and section 90 of the Act deems the landlord to have received it on September 13, 2022.

Pursuant to section 38(1) of the Act, the landlord had 15 days from September 13, 2022, to repay the security and pet damage deposits or file a claim against them. I find based on undisputed evidence of both parties that the landlord did not return their security deposit within 15 days. There is no evidence that the landlord filed a claim against the security deposit within 15 days of September 13, 2022.

Under section 38(6), if the landlord does not return the security deposit within the legislated time period outlined in Section 38(1) of the Act, the landlord must pay the tenant double the security deposit, pet deposit or both.

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.

The tenant's application for the return of the security deposit is granted. I find that the tenant is entitled to the return of \$1,400.00 representing double the amount of the security deposit currently held by the landlord. Her claim for the oven cleaning fee is denied as she provided no evidence of the basis for the claim.

As the tenant was successful in her application, she is also entitled to recover the \$100.00 filing fee for her application.

Conclusion

The tenant is granted a monetary order for \$1500.00 in recovery of the security deposit and of the filing fee. 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: January 18, 2023

Residential Tenancy Branch