



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“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 CA and tenant CJ appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to the return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on November 15, 2021 on a fixed term until May 31, 2022, following this it became a month to month tenancy. Rent was \$2,200.00 per month due

on the first day of the month. The landlord currently holds a security deposit of \$1,000.00 in trust for the tenant. The tenancy ended on October 29, 2022.

There is no dispute that a move in inspection was completed by the parties and the tenant signed it and received a copy. There is no dispute that a move out inspection was completed with both parties on October 29, 2022, and a move out report was completed and the tenant did not sign it. The landlord testified that the tenant refused to sign it. The tenant testified that she was never asked to sign it.

The tenant testified that it was her understanding at move out that the condition of the rental unit was acceptable and her security deposit would be returned by e-transfer. She took a picture at the time of the condition inspection report but did not receive a physical copy. On November 11, 2022 she contacted the landlord inquiring about the return of her damage deposit. She stated that the landlord had her email address for e-transfer purposes and that is how money had always been exchanged between the parties. She received a reply from the landlord on November 12, 2022 stating there were damages and that he was withholding the following:

- Paint \$40.00
- Lock \$100.00
- Locksmith \$150.00
- Cleaning \$252.00

The landlord told the tenant the total amount withheld from the security deposit would be \$542.00. He then provided \$552.00 by e-transfer. The tenant did not accept the e-transfer. She could not recall the date she received the e-transfer.

The landlord agreed with the tenant's version of events. However he stated that the tenant was aware that he had noted damages on the report at the move out inspection and that is why the tenant refused to sign the report. He added that the e-transfer returning the balance of her security deposit was sent on November 14, 2022. He further testified that the cleaning had been done and provided the invoice in evidence. The painting had been done as well. However the lock had not been repaired to date and the withheld amounts were just his estimates of the cost.

In the hearing the tenant admitted that there was some wall damage and she had tried to get an exact paint match to repair it, however she did not complete the repairs.

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.

Based on the undisputed testimony of the parties about a move-in inspection and the condition inspection report, I find the neither the landlord nor the tenant extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the Act.

Based on the testimony of the parties about a move-out inspection and the condition inspection report, I find that neither party extinguished their rights in relation to the security damage deposit pursuant to section 36 of the Act.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from October 29, 2022, the date of the move out inspection, to repay the security and pet damage deposits or file a claim against them. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator.

RTB Policy Guideline 17 states in part:

10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant’s agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled

RTB Policy Guideline 17 states further:

4. 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

In this instance, the tenant was not agreeing to have any portion of the security deposit retained for damage nor is there evidence that an arbitrator allowed the landlord to withhold any part of the deposit. The entire security deposit is therefore doubled, notwithstanding the fact that the landlord did attempt to return a portion. The landlord was required to return the entire amount or file a claim to keep part or all of the security deposit. The landlord did neither. I therefore find that I must double the security deposit pursuant to section 38 of the Act.

I find that the tenant is entitled to a monetary order for double the amount of the security deposit. The landlord has not claimed against the security deposit and therefore I will not consider the claims for cleaning and damage. As the tenant was successful in her application, she is also entitled to recover the filing fee.

Conclusion

The tenant is granted a monetary order as follows:

Claim	Amount
Security deposit (double)	\$2,000.00
Filing fee	\$100.00
Total	\$2,100.00

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: March 12, 2023

Residential Tenancy Branch