



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, FFT**

Introduction

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

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on September 2, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on September 7, 2022; and,
- the Landlord's evidence package served by registered mail on March 19, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant stated he

did not receive this package because he recently moved, deemed served on March 24, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term ended on June 30, 2022, and the tenancy ended. Monthly rent was \$2,100.00 payable on the first day of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy from two co-renters, at \$525.00 each.

The Landlord said she did a move-in condition inspection with the Tenants, and everything in the rental unit was perfect. At the end of the tenancy, the Landlord did the move-out condition inspection with one tenant, and she retained \$25.00 from that tenant and returned \$500.00 to them.

The Landlord testified that she retained \$190.00 from the Tenant's security deposit portion, and sent him a cheque for \$335.00 for the balance. She said she explained over text message why the deduction. The Tenant wrote her back saying, "*Respectfully: 1) You never informed me of a time/date of the move-out inspection. 2) I do not consent to any deduction to the security deposit.*"

The Landlord received the Tenant's forwarding address in writing which was sent by Canada Post registered mail on July 6, 2022. The Canada Post tracking number is copied on the cover sheet of this decision.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord still holds \$190.00 of the Tenant's security deposit.

The Tenant did a move-in condition inspection with the Landlord, but did not participate in a move-out inspection with the Landlord as he wrote he was not aware of the date and time of the inspection.

Analysis

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the testimonies of the parties, and I find the following:

- The tenancy ended June 30, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing on July 6, 2022 by Canada Post registered mail and the Landlord is deemed served with the forwarding address on July 11, 2022.

July 11, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from July 11, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the whole security deposit back to the Tenant or file a claim with the RTB against the security deposit within 15 days of July 11, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

38 ...

- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *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...*

The Tenant participated in a move-in condition inspection with the Landlord, but the Tenant was not notified or aware of when the move-out condition inspection was set. I find he did not extinguish his rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to Section 38(6) of the Act.

The Landlord must return **\$718.62** to the Tenant calculated as follows:

DEPOSIT	AMOUNT
Security deposit * 2 \$525.00 * 2 =	\$1,050.00
Interest on security deposit*	\$3.62
Less amount returned to Tenant	-\$335.00
TOTAL Monetary Award:	\$718.62

*There is no interest owed on the security deposit in 2021 and 2022 as the amount of interest owed in those years was 0%. The amount of interest in 2023 is 1.95%. The total interest was calculated using the RTB Online Tools: Deposit Interest Calculator.

As the Tenant was successful in his Application, I award the Tenant reimbursement for the **\$100.00** application filing fee pursuant to Section 72(1) of the Act.

In total, the Tenant is entitled to \$818.62 and I issue the Tenant a Monetary Order for this amount.

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to her for any remaining outstanding claims. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 604-660-1020 (Lower Mainland)
250-387-1602 (Victoria)
1-800-665-8779

Website: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies

Conclusion

The Tenant is issued a Monetary Order for \$818.62. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order

may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 09, 2023

Residential Tenancy Branch