



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding OCEAN VIEW APARTMENTS 1189682 BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 30, 2023, wherein the Tenant sought return of the security and pet damage deposit paid as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on May 30, 2023. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:46 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on February 13, 2023 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Tenant stated that the package was returned to her as the Landlord failed to accept service. She then personally delivered the hearing package to the Landlord by putting it through the Property Manager, D.S.'s mail slot.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of February 18, 2023 and I proceeded with the hearing in their absence.

The Tenant was cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Tenant confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of their security and pet damage deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that this tenancy began February 1, 2021. Monthly rent was \$1,000.00 and the Tenant paid a \$500.00 security deposit and a \$500.00 pet damage deposit.

The tenancy ended on January 31, 2023. The Tenant stated that she made arrangements with the Property manager to complete the move out condition inspection on that date yet the Property Manager did not attend.

The Tenant testified that she provided the Landlord with her forwarding address by email as this was the manner in which she regularly communicated with the Property Manager. The Tenant stated that in these emails she also provided the Landlord with her banking information to facilitate the return of her deposits by electronic transfer. When the Tenant did not receive a response from the Landlord the Tenant dropped off a paper copy of her forwarding address and request for return of her deposits at the Property Manager, D.S.'s office.

The Tenant confirmed the Landlord has not returned her \$1,000.00 in deposits, nor has the Landlord made any applications for authority to retain those funds. The Tenant further confirmed she did not authorize the Landlord to retain any portion of her deposits.

Analysis

The Tenant applies for return of the security deposit paid pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

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.

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Tenant paid \$1,000.00 as a security and pet damage deposit (the "Deposits").

I accept the Tenant's evidence that they did not agree to the Landlord retaining any portion of their Deposits. As well, I find that the Landlord failed to return the Deposits or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

I also accept the Tenant's testimony that the Landlord failed to perform an outgoing condition inspection report in accordance with the *Act*. Accordingly, I find the Landlord

also extinguished their right to claim against the Deposits for damages, pursuant to section 36(2) of the *Act*.

The Deposits are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the Deposits through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the Deposits

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$2,100.00**, comprised of double the Deposits paid and the \$100.00 fee for filing this Application.

Conclusion

The Tenant's application for return of double their Deposits and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$2,100.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: June 7, 2023

Residential Tenancy Branch