



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-DR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 17, 2022, wherein the Tenant sought return of double the security deposit paid.

The Tenant's Application was originally considered by Adjudicator Doyon, through the Direct Request proceeding pursuant to section 38.1 of the *Residential Tenancy Act* (the "*Act*"). She found that the matter could not be resolved through that proceeding and that a participatory hearing was required.

The original participatory hearing was scheduled before Arbitrator Smith on May 9, 2022. The Landlord failed to attend the May 9, 2022 hearing and Arbitrator Smith granted the Tenant's Application for return of double their security deposit.

The Landlord applied for Review Consideration of the May 9, 2022 decision pursuant to section 79 of the *Act*. Arbitrator Akow accepted the Landlord's written submissions that they could not attend the hearing for reasons which were both unanticipated and outside their control and ordered that a new hearing be scheduled.

The new hearing was scheduled before me on January 5, 2023. Prior to that hearing the Tenant made a formal Request for Summons of a document. I granted the Tenant's request and Ordered that the Landlord produce the *original* "Security Deposit Agreement". Through inadvertence my Decision and Order regarding the production of the "Security Deposit Agreement" was not provided to the parties such that when the hearing on January 5, 2023 convened the document had not been provided. I therefore adjourned the matter to ensure production of that document.

The hearing reconvened on June 13, 2023. The Landlord also requested that the Tenant provide *original* documents to the Branch; namely, the original receipt for payment of the security deposit as well as the original notice to end tenancy provided by the Tenant. At the hearing on June 13, 2023 the Tenant and his Advocate confirmed they would provide these documents, however, they clarified that the *original* notice to end tenancy was provided to the Landlord such that they could only provide a copy.

Hearings before the Residential Tenancy Branch are scheduled for an hour. Often this is insufficient for the hearing of a matter to conclude. In this case each party alleged the other was fabricating documents and many of those documents were not in English such that translations were required. As a result the hearing of this matter was lengthy and occurred over several days on June 13, 2023, August 14, 2023, October 3, 2023 and October 31, 2023. The Tenant Z.C. and his Advocate, M.B. called into every hearing as did the Landlord's Agent, A.L. The Landlord called into the October 3 and October 31, 2023 hearings only. Both parties provided affirmed testimony.

The matter concluded on October 31, 2023 in terms of the testimony of the parties, however, the parties did not complete their submissions. As the matter had already been significantly delayed, I ordered the parties provide written submissions: the Tenant provided 5 pages of written submissions on November 8, 2023; the Landlord provided 33 pages of written submissions on November 15, 2023; and, the Tenant provided his final reply in the form of 3 pages of written submissions on November 22, 2023.

Issue to be Decided

Is the Tenant entitled to return of double the security deposit paid?

Background and Evidence

In support of his application the Tenant provided an affidavit as well as affirmed testimony. He stated that this tenancy began September 2, 2019 and ended March 24, 2020. He further stated that at all material times during the tenancy he dealt with the Landlord who identified herself as H.W. The Landlord lived in the upstairs unit and the Tenant lived in the basement.

The Tenant sent his forwarding mailing address to the Landlord on April 6, 2020 by registered mail. That letter was returned to him, such that he re-sent it by e-mail on May 1, 2020.

On July 30, 2020, the Tenant first filed for the return of double his security deposit, naming H.W. as the respondent Landlord. The Landlord did not respond to the application and did not attend the hearing such that a Decision was made in her absence. The file number for that matter is included in the unpublished cover page of this my Decision. The Tenant obtained a Monetary Order for return of double his deposit and took steps to enforce the Order in the B.C. Provincial Court (Small Claims Division). A summons to a payment hearing was scheduled in Provincial Court and the Tenant posted the summons to the Landlord's door. After this the Tenant discovered, through a search of the title of the property, that the Landlord's legal name was L.D., not H.W.

The Tenant then reapplied for Dispute Resolution on November 28, 2022, naming the Landlord by her legal name, L.D. as the respondent. This matter convened as a result of that application and the procedural history is set out in the Introduction section of this my Decision.

The Tenant stated that the Landlord failed to conduct a move in or move out condition inspection. He further stated that he did not give the Landlord authority to retain his \$520.00 security deposit.

During the hearing on August 14, 2023 the Tenant confirmed the contents of his affidavit save and accept for the following clarification. The Tenant noted that on paragraph 5, he noted that there was an e-transfer to the Landlord on September 2, but he stated that it actually went through on the 3rd due to the Labour Day holiday in September.

The Tenant testified that the Landlord requested a full month's rent as a security deposit as well as his first month's rent. He stated that he sent \$260.00 by e-transfer and the balance of \$780.00 by cash. The Tenant received a receipt from the Landlord (who at that time identified herself as H.W.) dated September 2, 2019 confirming he had paid \$520.00 and \$520.00. A copy of this receipt was provided in evidence before me. As the document was not in English, the Tenant provided a certified translation of the document which confirmed the document read as follows:

"Receipt

This is to acknowledge that the amount of \$520 (for rent) and \$520 (for deposit) from [Z.Y.C.] have been received.

September 2, 2019
[H.W.]

The Tenant stated that he moved out March 24, 2020. The Tenant further testified that he provided his forwarding address to the Landlord by registered mail and by email. He stated that this occurred so long ago that the Canada post tracking information is no longer available, but he noted that in the original decision the Adjudicator found that the forwarding address was provided to the Landlord by registered mail.

In this case, I accept that the Tenant vacated the rental unit on March 24, 2020 and provided the Landlord with his forwarding address by registered mail on April 6, 2020. In accordance with Section 90 of the Act, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on April 11, 2020, the fifth day after the registered mailing.

The Tenant testified that the Landlord did not return his security deposit nor did she make an application for an order to retain the deposit.

In the hearing before me the Landlord submitted a document titled "Security Damage Deposit Refund Agreement". The Tenant testified that he did not sign this document and alleged it had been fabricated by the Landlord. The Tenant also noted that he did not receive a copy of this until a courtesy copy was provided to him by the RTB on November 29, 2022. The Tenant stated that upon receipt of this document the Tenant contacted the police regarding this document alleging it was a fraudulent document. The Tenant also contacted the RTB Compliance and Enforcement Unit (the "CEU") on the basis that the Landlord was submitting falsified documents. I was informed by the Tenant's Advocate that no findings had been made with respect to any criminal proceedings or the CEU complaint.

Despite submitting this document, the Landlord claimed the Tenant had not in fact paid a deposit and the Tenant was subjected to rigorous cross examination by her Advocate as to the payment of the deposit. In response the Tenant confirmed that he paid a total of \$1,040.00 to the Landlord representing \$520.00 for rent and \$520.00 for the security deposit; he stated that he sent an electronic transfer of \$260.00 to the Landlord, and then paid \$780.00 in cash. He noted that his banking records showed that he transferred \$260.00 and withdrew \$800.00. Copies of those records were provided in evidence before me. The Tenant testified that he received money from his dad at some time after the transfer such that he was able to withdraw the \$800.00.

The Tenant also provided a text message from the Landlord dated September 2, 2019 at 10:15 a.m. in which the Landlord confirmed receipt of the rent and the deposit.

The Tenant noted that his banking records indicated that the funds were received by the landlord on September 3, 2019, but this was simply due to the way the bank records transactions. He noted that there are no transactions on September 1 or 2, instead there are 10 transactions on September 3, 2019.

In reply to the Tenant's testimony and submissions the Landlord provided affirmed testimony as well as an affidavit.

The Landlord denied receiving any deposit from the Tenant and suggested it was "ridiculous". The Landlord denied using the name H.W. and also denied sending text messages to the Tenant confirming receipt of the deposit and alleged that those messages were fabricated by the Tenant.

In terms of the deposit she stated that he was a student with money problems and he did not have the money to pay a deposit. She then stated that she never gave him a receipt as he never paid.

In cross examination the Landlord confirmed that the Tenant paid \$260.00 on September 2, 2019. The Landlord stated that she did not give him a receipt for the partial payment claiming that she only gives receipts if the Tenant pays in *full*.

The Landlord then stated that his rent was supposed to be \$550.00 but discounted to \$520.00 unless the Tenant moved out early in which case he would be responsible for the difference.

A copy of a standard form RTB residential tenancy agreement was provided in evidence and which indicated the Tenant also paid a pet damage deposit. In cross examination, the Tenant's advocate suggested that the RTB form was created *after* the tenancy ended, and the Landlord claimed to collect a pet damage deposit because it was contrary to the *Act*, as she was in fact collecting a full months rent as a deposit.

The Landlord denied this and said they met and wrote up the residential tenancy agreement together. She also said that she asked for a pet deposit because "everyone always lies and then secretly brings in pets/cats after the tenancy begins" and she does

this to be on the “safe side”. The Landlord then reiterated that the Tenant never paid \$1.00 of any deposit.

The Landlord then stated that she intended to collect \$550.00 in rent and \$275.00 in security deposit and \$275.00 in pet damage deposit.

The Landlord alleged that all of the text messages provided in evidence by the Tenant were fake. She denied using the phone number and denied ever using the name H.W. The Landlord stated that she did not use the email H.W. and said “all of this was fake” and part of the Tenant’s deception.

The Landlord then testified that the Tenant came to the rental property repeatedly, and harassed the Landlord until she gave him the deposit back. She also claimed she called the police and the police told her that it was a tenancy matter.

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 testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Tenant was obligated to pay rent in the amount of \$520.00 per month. I further find the Tenant paid a security deposit of \$520.00 to the Landlord and that he made these payments together when the tenancy first began in 2019. I accept his testimony in this regard that part of the payment was made by e-transfer (\$260.00) and the balance was paid by cash (\$780.00). Where his testimony conflicts with the Landlord's, I prefer the Tenant's for reasons which will be set out further in this my Decision.

I find, based on the Tenant's testimony and submissions, as well as the finding of my fellow Arbitrator Edwards on November 30, 2020, that the Tenant provided the Landlord with his forwarding address on April 11, 2020.

I further find that the Landlord failed to return the deposit 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 accept the Tenant's testimony that the Landlord also failed to perform incoming or outgoing condition inspection reports in accordance with the *Act*, such that the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The Landlord's advocate made extensive submissions regarding the Landlord's view that this was a fixed term tenancy as well as allegations the Tenant did not pay rent. The Landlord also testified that the Tenant had financial issues and claimed he did not pay rent when required. These issues are not relevant to the Tenant's entitlement to return of his deposit, yet suggest the Landlord may have felt entitled to retain those funds. Had the Landlord believed she was entitled to monetary compensation from the Tenant she was at liberty to apply to the Residential Tenancy Branch for an order for monetary compensation from the Tenant.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit 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 security deposit.

When testifying before me in October of 2023 the Landlord repeatedly testified that the Tenant failed to pay a deposit. She alleged he falsified text messages. She denied using the phone number from which text messages were sent relating to the tenancy. She also stated that she never used the name, H.W., or an email address or phone number associated with that name. At one point in time in her testimony the Landlord stated that the Tenant's claim that he paid a deposit was *ridiculous*.

As noted, this hearing convened as a review hearing. The Tenant had previously obtained an Order for return of double his deposit. The Landlord failed to attend that hearing and filed for Review Consideration on October 22, 2022. In her written submissions requesting a review hearing, the Landlord provided a "Security Damage Deposit Refund Agreement" dated April 30, 2020.

The Landlord also provided the "Security Damage Deposit Refund Agreement" document to the RTB on January 3, 2023 when filing her response to this current application. This was included at page 16 of 33 pages of documents submitted by the Landlord.

The Tenant denies signing this document and alleges this document was falsified by the Landlord. In any case, it was the *Landlord* who submitted this document to the Residential Tenancy Branch. At best this document indicates she received a deposit and returned it to the Tenant. At worst it is a falsified document submitted by the Landlord with the intention of obtaining a favourable result and setting aside the May 26, 2022 Decision of Arbitrator Smith. This is in stark contrast to her testimony that she *never* received \$1.00 of a deposit from the Tenant.

Inexplicably the Landlord and her Advocate repeatedly advanced the polar arguments that either the Tenant never paid a deposit or that the deposit was repaid.

On balance, I find the Landlord lacks credibility. I am unable to reconcile the Landlord's evidence and her own testimony. As noted, in submissions to the Branch on her application for a Review Hearing, the documentary evidence she filed in response to this application, and her written submissions she claims the deposit was already returned. Yet she was adamant during the hearing before me when providing affirmed testimony that the Tenant failed to pay a deposit at all.

The Landlord also testified during her testimony before me that she did not use the name H.W. I simply do not believe her in this respect. The evidence confirms the Landlord lived in the upper unit and the Tenant lived in the basement. The Landlord's Advocate submitted that they had regular contact. As aptly noted by the Tenant's Advocate, it belies reason the Tenant would have initially applied for Dispute Resolution over three years ago naming the Landlord as H.W. had he not believed this was her name. I accept his testimony that only after he served her with a summons hearing notice that he conducted a title search to discover her legal name. Further, it is notable that in her own affidavit of April 27, 2023 she did not raise any issue with the name

H.W., the associated email or phone number. Certainly had she not used this name, one would have expected her to deny this at first opportunity.

Conversely, I found the Tenant to be forthright and consistent in his testimony. The Tenant has consistently maintained he paid a security deposit in the amount of \$520.00 to the Landlord. As early as July 2020 he filed for dispute resolution seeking return of these funds. His testimony in this regard has also been consistent. When he realized the banking information suggested the deposit was paid a day later, he clarified this at first instance in his testimony and provided his banking records to clarify and corroborate his version of events. On balance, I find it more likely than not the Tenant paid the \$520.00 deposit to the Landlord.

Having made the above findings, I find the Tenant is entitled to return of double the security deposit paid. **I therefore confirm the Decision and Order of Arbitrator Smith made May 26, 2022.**

In his final written submissions, the Landlord's advocate submitted that the Tenant's application should be dismissed as the current application was filed outside the two year time limit imposed by section 60 of the Act. As noted the Tenant initially applied for dispute resolution on July 30, 2020, within months of the tenancy ending. He named H.W. as the Landlord as that was the name she used throughout his tenancy. I find it likely the Landlord used the name H.W. with the Tenant during the tenancy as a means to avoid any legal liability.

As such, I find that by initially applying for dispute resolution shortly after the tenancy ended, the Tenant complied with section 60 of the Act. Notably the Tenant successfully obtained an order for return of his deposit from H.W. It was only after he went through the lengthy procedure of obtaining such an Order and enforcing it in the Small Claims Court that he was alerted to the fact the Landlord's legal name was L.D. Immediately upon discovering this he refiled the current application. I find these to be "exceptional circumstances" warranting an extension pursuant to section 56 of the Act of the two year limit imposed by section 60 of the Act.

Conclusion

The Decision and Order of Arbitrator Smith made May 26, 2022 are confirmed.

This Review Consideration 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: December 27, 2023

Residential Tenancy Branch