



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on November 24, 2023. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security and pet damage deposits and to recover their filing fee.

The Tenant’s Application for Dispute Resolution was made on December 5, 2023. The Tenant applied for a monetary order for compensation for monetary loss or other money owed, the return of their security deposit and the return of their filing fee.

The Landlord, the Landlord’s Advocate (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Missing Service of Notice of Hearing

At the outset of these proceedings, the service of the Landlord’s Notice of Dispute Resolution Hearing documents was considered, as the Tenant testified they had not been served. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute

Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

“3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

“The applicant must, within **three days** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].”

The Landlord initially testified that they had served the Tenant the Notice of hearing documents by Canada Post Registered Mail, sent on November 25, 2023.

It was noted that the Notice of Hearing documents had not been created by the Residential Tenancy Branch until November 27, 2023.

The Landlord then changed their testimony, stating that they had not served the Notice of Hearing documents for their application to the Tenant.

As the service of the Notice of Dispute Resolution Hearing documents was not completed, I find that the Tenant has not been duly served in accordance with section 3.1 of the Residential Tenancy Branch rules of procedure and section 59 of the Act.

Consequently, I dismiss the Landlord's application for a monetary order for monetary loss or other money owed with leave to reapply.

I dismiss the Landlord's application for permission to retain the security deposit and to recover the filing fee paid for this application without leave to reapply.

This decision does not extend any legislated timelines pursuant to the Act.

Issues to be Decided

- Is the Tenant entitled to a monetary order for compensation for monetary loss or other money owed?
- Is the Tenant entitled to the return of their security and pet damage deposits?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenant submitted that this tenancy began on May 31, 2021, that rent for this tenancy was set at the amount of \$2,743.80 and was to be paid by the first day of each month, with a \$1,325.00 security deposit collected by the Landlord.

The Landlord agreed that they are still holding the security deposit for this tenancy.

The parties agreed that this tenancy ended on October 31, 2023.

The Tenant submitted that they had provided the Landlord with their forwarding address by personal service on October 30, 2023, when they attended the rental unit to conduct the move-out inspection with the Landlord.

The Landlord agreed that they attended the rental unit with the Tenant on October 30, 2023, to conduct the move-out inspection but disagreed that the Tenant had provided them with a written forwarding address at that time.

The Tenant provided a witness to these proceedings, witness J.G. testified that they attended the move-out inspection with the Tenant and that they had witnessed the Tenant writing their forwarding address down on a piece of paper and handing it to the Landlord.

The Tenant testified that the Landlord refused to take the piece of paper with their forwarding address on it with them at the end of the inspection but that it was left on the counter in the rental unit.

The Tenant submitted that they never gave the Landlord permission to retain their deposits for this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 38 of the *Act* sets the requirements on how the security and pet damage deposits are handled at the end of a tenancy, stating the following:

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].

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on October 31, 2023. In addition, I also accept the submissions of the Tenant, supported by the witness testimony, that they provided their forwarding address to the Landlord by personal service on October 30, 2023.

Accordingly, I find that the Landlord had until November 14, 2023, to comply with sections 38(1) of the *Act* by repaying the deposit in full to the Tenant or applying to claim against the deposit for this tenancy.

However, in this case, the Landlord did not return the deposit to the Tenant and delayed filing a claim against the security deposit until November 24, 2024, 10 days after the legislated time limit to apply had expired.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or claim against a deposit within 15 days, the landlord must pay the tenant double the value of the deposits.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act*, the value of the deposits for this tenancy has doubled to the amount of \$2, 650.00 due to the Landlord's breaches of the *Act*.

The Landlord is ordered to return the doubled value of the deposit in the amount of \$2,650.00, plus interest on the original amount of the deposits, in the amount of \$24.31, to the Tenant.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to recover their deposits, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or claim against the security deposit for this tenancy to the Tenant, within the legislated timeline.

I find that the security deposit paid for this tenancy has doubled in value to \$2,650.00, due to the Landlord's breach of section 38 of the *Act*.

I grant the Tenant a **Monetary Order** in the amount of **\$2,774.31** for the return of the doubled value of the security deposit, plus interest and the recovery of their filing fee for this application pursuant to sections 38, 67 and 72 of the *Act*. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: April 2, 2024

Residential Tenancy Branch