# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

## REVIEW DECISION

Dispute Codes:

MNSD and FF

Introduction

This dispute was the subject of a dispute resolution hearing on December 16, 2011, in which a Dispute Resolution Officer, determined that the Tenant was entitled the return of double the security deposit paid and the cost of filing her Application for Dispute Resolution.

On January 03, 2012 the Landlord filed an Application for Review Consideration, in which she applied for a review of the decision. On January 10, 2012, another Dispute Resolution Officer granted the Landlord's application for a review and ordered that a new hearing be convened.

This review hearing was convened in response to the original Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch but she stated that copies of those documents were not served to the Tenant. As these documents were not served to the Tenant they were not accepted as evidence for these proceedings. The Landlord and the Tenant agree that the only document served to the Tenant by the Landlord was the Notice of the Hearing on February 06, 2011.

The Tenant submitted documents to the Residential Tenancy Branch copies of which were sent to the Landlord, via registered mail, on October 07, 2011. She stated that these documents were returned to her by Canada Post. The Landlord stated that this mail was never received nor did the Landlord ever receive notice from Canada Post that a package had been sent to them by registered mail.

The Tenant stated that she was made aware that the Landlord had not received the registered mail she sent on October 07, 2011 when the Residential Tenancy Branch mailed a copy of the Review Consideration Decision to her. She stated that she did not re-serve the aforementioned documents to the Landlord. As there is no evidence that

the Landlord received the documents submitted by the Tenant and the Tenant did not attempt to re-serve them after becoming aware that the Landlord had not received them, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2010; that the Tenant and two co-tenants are named in the tenancy agreement for this rental unit; and that there was a condition inspection report completed on September 03, 2010, which was signed by one of the co-tenants.

The Landlord stated that the Landlord entered into a written tenancy agreement with two additional women and that this tenancy agreement allowed these two women to reside in the rental unit for monthly rent of $500.00, effective May 01, 2011. The Landlord and the Tenant agree that the Tenant and a second co-tenant did not live in the rental unit while these two additional women were living in the rental unit and that the Tenant and the second co-tenant were only required to pay $100.00 in rent while they were not actually living in the unit.

The Landlord and the Tenant agree that a security deposit of $900.00 was paid when the tenancy began; that the Tenant and a second co-tenant paid an additional security deposit of $50.00 each prior to the two additional women moving into the rental unit; and that the two additional women paid a security deposit of $250.00 when they moved into the rental unit.

The Landlord and the Tenant agree that all occupants of the rental unit moved out of the unit by August 31, 2011 and that the Tenant provided the Landlord with a forwarding address, in writing, on September 02, 2011.

The Landlord and the Tenant agree that there was a condition inspection report completed on August 31, 2011, which was signed by all three of the original co-tenants and one of the women who moved into the rental unit in May of 2011. The Landlord and the Tenant agree that none of the women involved with this rental unit were given a copy of this report after it was completed and that it was never served to the Tenant as evidence for these proceedings.

The Landlord contends that the four parties who signed this Condition Inspection Report, one of whom was the Tenant, agreed that the Landlord could retain $75.00 per person for the cost of cleaning the rental unit, and that this agreement is recorded on the Condition Inspection Report. The Tenant stated that she has never seen a copy of

the Condition Inspection Report but she did not believe that the Report gave the Landlord the right to retain any portion of the security deposit. I specifically note that the Condition Inspection Report was not considered when determining this matter, as it was not properly served on the Tenant as evidence for these proceedings.

The Landlord agrees that the Landlord did not file an Application for Dispute Resolution seeking to retain any portion of the security deposit.

The Landlord stated that on September 15, 2011 she sent the co-tenant with the initials "S.G" a cheque numbered #224, in the amount of $250.00. She stated that this cheque was cashed on an unknown date. She stated that this cheque represented the return of this person's $300.00 security deposit, less the $75.00 cleaning charges, plus $25.00 for a curtain rod this Tenant left at the rental unit. The Tenant did not dispute this statement.

The Landlord stated that on September 15, 2011 she sent the individual with the initials "K.D" a cheque numbered #222, in the amount of $175.00. She stated that this cheque was cashed on October 06, 2011. She stated that this cheque represented the return of this person's $250.00 security deposit, less the $75.00 cleaning charges. The Tenant did not dispute this statement.

The Landlord stated that on September 15, 2011 she sent the individual with the initials "A.H" a cheque numbered #223, in the amount of $175.00. She stated that this cheque was cashed on December 23, 2011. She stated that this cheque represented the return of this person's $250.00 security deposit, less the $75.00 cleaning charges. The Tenant did not dispute this statement.

The Landlord stated that on September 15, 2011 she sent the individual with the initials "B.D" a cheque numbered #225, in the amount of $275.00. She stated that this cheque was cashed on September 30, 2011. She stated that this cheque represented the return of this person's $300.00 security deposit and the $50.00 security deposit she paid after the tenancy began, less the $75.00 cleaning charges. The Tenant did not dispute this statement.

The Landlord stated that on September 15, 2011 she sent the Tenant a cheque numbered #998, in the amount of $275.00. She stated that this cheque had not been cashed the last time she checked her bank account. She stated that this cheque represented the return of the Tenant's $300.00 security deposit and the $50.00 security deposit the Tenant paid after the tenancy began, less the $75.00 cleaning charges. She stated that this cheque was written on a different bank account than the previous four cheques as she only had one cheque left for this account and she had to use cheques for a different account for the other refunds. She stated that she sent this cheque to the address provided to her by the Tenant and that the cheque has not yet been returned to her.

The Tenant stated that she has never received the cheque for $275.00.

The Tenant stated that she sent the Landlord an email on September 28, 2011 enquiring about the deposit but that the Landlord did not respond to the email. The Landlord stated that she did not receive this email.

The Tenant did not dispute this statement.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution hearing, at which time the Landlord has been ordered to return double the $250.00 security deposit paid by the individual with the initials “A.H.”.

Analysis

On the basis of the undisputed evidence before me at the hearing, I find that the Landlord entered into a tenancy agreement with the individuals with the initials “J.L.”, “S.G.”, and “B.D.”, which began on August 01, 2010, in which all three parties were co-tenants.

Co-tenants are two or more tenants who rent the same property and have signed the same tenancy agreement. Co-tenants have equal rights and are jointly responsible for meeting the terms of the agreement and are jointly liable for debts and damages related to the tenancy. A landlord has the right to recover the full amount of the rent or the full cost of the damages from all or any one of the co-tenants. In these circumstances these co-tenants were jointly required to pay rent of $1,800.00 per month and were jointly required to pay a security deposit of $900.00.

On the basis of the undisputed evidence before me at the hearing, it appears that the Landlord entered into a separate tenancy agreement with the individuals with the initials “A.H.” and “K.D.”. It is unclear to me whether these two individuals are co-tenants on the same agreement or whether they each had a separate tenancy agreement. It appears this tenancy(s) began on May 01, 2011, in which each individual was required to pay rent of $500.00 per month and each paid a security deposit of $250.00. I find that any security deposits paid by these individuals relate to the second tenancy and are not subject to this dispute resolution proceeding.

On the basis of the undisputed evidence before me at the hearing, I find that the individuals with the initials “J.L.” and “B.D.” each paid an additional security deposit of $50.00 at some point in the tenancy as part of the agreement to allow the individuals with the initials “A.H.” and “K.D.” to move into the rental unit. On the basis of the undisputed evidence before me at the hearing, I find that Landlord and the co-tenants with the initials “J.L.” and “B.D.” and the Landlord mutually agreed to reduce the rent to $800.00 for the period between May 01, 2011 and August 31, 2011 while the other two individuals were paying rent of $1,000.00. It appears that the parties understood that the co-tenants with the initials “J.L.” and “B.D.” would each pay rent of $100.00 per month and the co-tenant with the initials “S.G.” would pay $600.00 for the period between May 01, 2011 and August 31, 2011.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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 onus is the Landlord to establish that it has the right to retain any portion of the security deposit pursuant to this section.

I find that the Landlord has submitted insufficient evidence to show that it had the right to retain $75.00 from the security deposit paid by the co-tenants with the initials J.L.", "S.G.", and "B.D.". In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates the Landlord's testimony that she had written permission to retain $75.00 per person from the security deposit or that refutes the Tenant's testimony that the Landlord did not have written permission to retain any amount from the security deposit. In reaching this conclusion I specifically note that I did not have the benefit of considering the Condition Inspection Report, on which the Landlord contends she was given written permission to retain a portion of the security deposit, as that Report was not served to the Tenant as evidence for these proceedings.

As the Landlord has not established grounds to retain the security deposit pursuant to section 38(4)(a) of the *Act*, I find that she was obligated to comply with section 38(1) of the *Act.* Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, any security deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid all of the $1,000.00 security deposit that was jointly paid by the three co-tenants and she has not filed an Application for Dispute Resolution claiming against the deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

I find that the Tenant has established a monetary claim of $2,050.00, which is comprised of double the original security deposit of $900.00 security deposit paid by the co-tenants with the initials J.L.", "S.G.", and "B.D.", double the additional security deposit of $100.00 paid by the co-tenants with the initials "S.G.", and "B.D.", and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. I specifically note that I am awarding double the amount to the Applicant in this matter, as she has the right to represent her two co-tenants in this matter.

I further note that I am not awarding the Tenant double the security deposit that was paid by the individuals with the initials “A.H.” and “K.D.”, as it appears they had a separate tenancy agreement with the Landlord and cannot, therefore, be represented at this hearing by the Tenant.

As the Landlord has already returned $525.00 of the security deposit to the co-tenants with the initials “S.G.”, and “B.D.”, I find that the monetary claim of $2,050.00 must be reduced by this amount. On the basis of these calculations I award the Tenant a monetary Order in the amount of $1,525.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This monetary Order does not reflect the $275.00 cheque that the Landlord contends was mailed to the Tenant on September 15, 2011, as the Tenant contends that she did not receive that cheque. In the event the Tenant locates and cashes this cheque, this monetary Order must be reduced by $275.00.

This decision and Order replaces the decision and Order made on December 19, 2011. The monetary Order of $750.00 granted to the Tenant on December 19, 2011 is of no force or effect. The difference in the amount of the two monetary awards is reflected by the fact that it does not appear that the initial dispute resolution officer was made aware that the co-tenants had jointly paid a security deposit of $900.00 at the start of the tenancy and that an additional $100.00 security deposit had been paid.

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: February 07, 2012.

Residential Tenancy Branch