



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend. The tenant who filed this application was given a full opportunity to be heard, to present evidence and to make submissions. A witness (co-tenant) attended on behalf of the tenant. The applicant/tenant testified that he served the landlord with his Application for Dispute Resolution on December 5, 2014 by registered mail to the address provided by the landlord on his residential tenancy agreement. He provided the tracking number and receipt information with respect to this mailing. The tenant testified that he had no knowledge of the mailing being returned. Pursuant to section 89 of the *Act*, I find the landlord was deemed served with the Application for Dispute Resolution hearing package by way of registered mail on December 10, 2014, 5 days after its registered mailing. Policy Guideline No. 12 provides that,

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served. ...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.

The landlord did not attend this hearing to address his application or respond to the application of the tenant. Dispute Resolution Rules of Procedure Rule 10.1 regarding commencement of hearings, states;

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the landlord, I order the landlord's application dismissed without liberty to reapply.

Issues to be Decided

Is the tenant entitled to the return of all or a portion of his security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant and his witness/co-tenant both gave evidence that the residential tenancy agreement for the rental premises began on April 1, 2013. The tenant testified that this tenancy was initially established as a fixed term tenancy with a rental amount of \$1200.00 payable on the first of each month. After a period of one year, the vacancy continued with a rent reduction. The tenant testified that he and his co-tenant paid the landlord a security deposit in the amount of \$600.00 at the outset of the tenancy, on April 1, 2013.

The tenant testified that he and his co-tenant vacated the premises on October 31, 2014. He testified that they provided two months' notice that they intended to vacate the premises. He also testified that, while no move-in or move-out condition inspection report was completed by the landlord, he left the rental unit in "immaculate" condition. The tenant's witness/co-tenant testified that they ensured the rental unit was very clean when they vacated the unit. The tenant also testified that, on November 12, 2014, he provided the landlord with his forwarding address in writing and requested that the landlord return the security deposit to that address. The tenant testified that, despite several attempts to discuss the security deposit with the landlord over November and December 2014, the security deposit has not been returned by the landlord.

The tenant testified that he had had a very good relationship with his landlords and that he knew of no reason why they would retain his security deposit. He testified that, in December 2014, the landlords claimed verbally that the tenant owed approximately \$2000.00 but that at no point did he agree to allow the landlords to retain his security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The landlord's application with respect to this deposit was dismissed as he has failed to attend this hearing. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. In this case, the landlord had 15 days after November 12, 2014 (when the forwarding address was provided by the tenant) to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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 tenant and his witness/co-tenant both testified that they did not provide any authorization for the landlord to retain any portion of their security deposit. As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- ...▪ If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlords have neither applied successfully for dispute resolution nor returned the tenant's security deposit within the required 15 days. The landlord's right to claim against the deposit is therefore

extinguished under the *Act*. The tenant and his co-tenant gave sworn testimony that they have not waived their rights to obtain a payment owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. In accordance with section 38(6) of the *Act*, I find that the tenant/applicant is entitled to the return of his security deposit and a further monetary award amounting to the equivalent of his security deposit. There is no interest payable on this deposit amount.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed without liberty to reapply.

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1250.00

The tenant is provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 22, 2015

Residential Tenancy Branch