Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction and Preliminary Matters

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant applied for a Monetary Order for return of double the security deposit, a Monetary Order pursuant to section 67 of the *Residential Tenancy Act* for recovery of rent paid and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing the parties confirmed the address of the rental unit. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, I amend the Tenant's Application for Dispute Resolution to properly note the address of the subject tenancy.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?

2. Is the Tenant entitled to recovery of rent paid?

3. Should the Tenant recovery the fee paid to file her application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this one year fixed term tenancy began March 1, 2015 and was set to end on February 29, 2016. The tenancy agreement also provided that the Tenant paid a security deposit of $600.00 on February 14, 2014; the Tenant confirmed that the security deposit was in fact paid on February 12, 2015.

The Tenant testified that she gave notice to end her tenancy on October 12, 2015 effective November 5, 2015. A copy of this email was introduced in evidence and which reads as follows:

> *"Hi. J.*
>
> *I wanted to let you know that the person intended to take over the lease has unexpectedly fallen through. As a result I will have to give my 30 days notice and forfeit the lease. Consequently, I recognize that I will be losing my damage deposit.*
>
> *I apologize for the inconvenience that this causes you. The apartment has been wonderful and you have been very gracious and understanding as a landlord.*
>
> *Sincerely,*
>
> *T.T."*

The Tenant vacated the premises on October 20, 2015. The Tenant testified that the Landlords posted the rental unit immediately upon receiving her Notice and was able to rent the rental unit as of October 21, 2015. The Tenant submitted that she should be reimbursed for the rent paid from October 21 to October 31, 2015 as she no longer had possession of the rental unit and the unit was rented to a third party.

The Tenant testified that the only reason she knew a new tenant had moved into the rental unit was that on October 25, 2015, G.J. contacted her to ask if the dishwasher was leaking as the tenant in the downstairs called the new tenant about leaking in the lower unit.

The Tenant testified that she provided the Landlords with her forwarding address in writing on the date the move out condition inspection report was completed. She also provided her forwarding address on October 26, 2015 by email. A copy of that email was introduced in evidence.

Also introduced in evidence was a copy of pages one and two of the move out condition inspection report. The Tenant claimed that she was not provided with pages three and four of this document. She also stated that the Landlords' agent did not bring a copy of the move out condition inspection report to the inspection and she had her copy from when they did the move in. She confirmed that she was the only one with completed "copy" or at least the two pages which were in evidence.

The Tenant testified that she received a money order from the Landlords in the amount of $256.73 on October 30, 2015, such that the Landlords deducted a total of $343.27. The Tenant testified that she agreed the Landlords could deduct the cost of advertising ($46.25) and cleaning ($200.00) from her security deposit, however she testified that she did not agree to any deductions for alleged damage to the couch.

The Tenant confirmed that she received a copy of a receipt for advertising in the amount of $46.25. She also confirmed that she was also charged $200.00 for cleaning; although she stated at the hearing that the cleaner appears to be related to the Landlords, she confirmed at the hearing that this amount was agreeable to her.

The Landlords provided the Tenant with a letter dated October 30, 2015 wherein the Landlords calculated the amount owing to the Tenant as follows:

Damage Deposit paid	$600.00
Interest on deposit	$2.98
Cleaning fee	$200.00
Burn mark on sofa	$100.00
Advertising fee	$46.25
Damage Deposit returned	$256.73

The Tenant disputed the $100.00 for alleged damage to the couch. She confirmed she did not agree to this amount at any time.

The Landlords' brother, G.J., provided evidence on behalf of the Landlords. He confirmed that he did complete and provide to the Tenant all four pages of the move out condition inspection report. He stated that he printed the document off of the website and would not have attended the move out inspection with only two pages. That document was not in evidence before me. He stated that he did not believe he was required to provide any evidence in support of the Landlords' position at the hearing.

G.J. confirmed that he rented the rental unit as of October 21, 2015. He also confirmed that the Landlords did not accept rent from this renter.

The Landlords also testified. She stated that she did not have a copy of the move out condition inspection report. She stated that the Tenant broke the lease and forfeited her damage deposit and as such it was her position that she was not required to make an application to retain the security deposit. In support she drew my attention to the email sent by the Tenant on October 12, 2015 which has been reproduced earlier in this my Decision.

The Landlords also testified that she did not accept rent for October 21, 2015 to October 31, 2015 as she used this as an incentive to get a renter into the rental unit.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (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
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> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
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> (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.

While the Tenant wrote in her email dated October 12, 2015 that she would "be losing [her] damage deposit", the Landlords responded to that email the same day indicating that the deposit may not be sufficient to cover the potential loss of rent due to the Tenant giving insufficient notice to end the tenancy. Consequently, I find there was no agreement between the parties that the Landlords could retain the entirety of the Tenant's security deposit.

The Landlords 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 Landlords 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.

The Tenant testified that she agreed the Landlords could retain a portion of her security deposit for the cost of advertising ($46.25) and cleaning of the rental unit ($100.00). She specifically denied agreeing the Landlords could retain $100.00 for damage to the sofa. After careful consideration of the evidence before me, including the testimony of the parties, I find the Tenant did not agree the Landlords could retain $100.00 of her security deposit to compensate the Landlords for the alleged damage to the sofa. Accordingly, I find that the Landlords did not have any authority under the *Act* to keep this $100.00 portion of the security deposit.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain the disputed $100.00 portion of the security deposit as required by section 38(1).

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlords must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. I must now determine what amount is to be doubled.

Residential Tenancy Branch Policy Guideline 17-Security Deposit and Set Off provides examples, at paragraph 5, for the calculation of security deposits to be repaid. The case before me fits within Example C. For ease of reference and for the parties' mutual benefit, I reproduce this portion of the *Guidelines*

> • Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization.
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> The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is

Accordingly, as I have found that the Tenant did not agree to the Landlords retaining $100.00 for the cost of repairing the sofa, the Landlords must return **$200.00** representing double this disputed amount. The Landlords are reminded that unless a Tenant agrees in writing that the Landlords may retain a portion of the security deposit, the Landlords *must* make an application for dispute resolution within the required time to obtain an Order from an arbitrator authorizing them to retain the funds.

The Tenant sought recovery of the rent paid from October 21 to October 31 on the basis that the rental unit was re-rented as of October 21. The Landlords and her agent testified that no rent was received for that time period as the Landlords allowed the new renter to move in early as an incentive.

The evidence confirms that the Tenant gave her notice to end the tenancy by email dated October 12, 2015.

Section 45 of the *Residential Tenancy Act* is the authority for a Tenant ending a tenancy and reads as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the case before me, the Tenant signed a fixed term tenancy agreement. Accordingly, the Tenant was not able to end her tenancy before the end of the term. Fortunately, the Landlords were able to rent the unit out immediately after the Tenant vacated. This was a considerable benefit to the Tenant as had the Landlords not been able to rent the rental unit, the Tenant may have been liable to pay rent for the balance of the rental term.

I accept the Landlords' evidence as well as that of her agent that they did not accept rent for the time period October 21 to October 31, 2015. I further accept that they provided this concession as an incentive to rent the rental unit as quickly as possible. In doing so, they satisfied their obligation pursuant to section 7 of the *Residential Tenancy Act* to mitigate their losses. And, as noted, they reduced any claim for lost rent which was beneficial to the Tenant.

In all the circumstances, I find the Tenant is not entitled to return of the rent paid for the time period October 21 to October 31, 2015.

The Tenant was partially successful in her claim before me. Pursuant to section 72(1) of the *Act,* I award her recovery of the $50.00 filing fee for a total of **$250.00.**

The Tenant is granted a Monetary Order in the amount of **$250.00** and must serve the Order on the Landlords. The Tenant may also file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant is awarded the sum of **$250.00** representing double the $100.00 disputed amount of her security deposit and recovery of the filing fee. Her claim for return of the rent paid for October 2015 is dismissed.

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 24, 2016

Residential Tenancy Branch