



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on February 15, 2019 wherein the Tenant requested return of double the security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 4, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that she moved into the rental unit April 1, 2015. She paid \$600.00 in rent. At the end of the tenancy her rent was \$700.00.

The Tenant testified that she paid a security deposit of \$350.00 and a \$350.00 pet damage deposit.

The Tenant further testified that she moved from the rental unit on December 31, 2018. The Tenant provided her forwarding address to the Landlords on December 1, 2018; she confirmed this address was an address of her former landlord as she was unsure where she was moving when the tenancy ended. She stated that she gave them notice to end her tenancy as well as her forwarding address and her rent cheque on December 1, 2018. A copy of this letter was provided in evidence before me.

The Tenant testified that she subsequently provided the Landlords with her current residential address, which was included on the Application and which I have recorded on the unpublished cover page of this my Decision.

In response to the Tenant's testimony and submissions the Landlord, V.P., testified as follows.

The Landlord stated that the Tenant paid \$300.00 security deposit and a \$300.00 pet damage deposit.

The Landlord confirmed that he received the Tenant's forwarding address on December 1, 2018.

The Landlord stated that the Tenant moved from the rental unit on December 15, 2018.

The Landlord confirmed that they have not made an application for dispute resolution and did not return the Tenant's deposits as they incurred costs to clean the rental unit when the tenancy ended.

As the parties gave conflicting testimony as to the amount of the deposits paid, I reminded them that the residential tenancy agreement provided in evidence confirmed that the tenant paid a \$325.00 security deposit and a \$325.00 pet damage deposit. Both of them confirmed the amounts paid as set out in the agreement.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I find, based on the residential tenancy agreement filed in evidence, that the Tenant paid a security deposit in the amount of \$325.00 and a pet damage deposit in the amount of \$325.00 for a total of \$650.00 in deposits.

A tenant may end a tenancy provided that the notice complies with section 45 of the *Act*, which provides 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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The evidence confirms that the Tenant gave written notice to end her tenancy on December 1, 2018. Pursuant to section 45 of the *Act*, the effective date of her notice is January 31, 2019. The evidence confirms that the Tenant vacated the rental unit sometime between December 15, 2018 and December 31, 2018.

The parties agreed that the Landlords received the Tenant's forwarding address on December 1, 2018.

The Tenant applies for return of double the deposits paid pursuant to section 38 of the *Residential Tenancy Act*; section 38 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.

The Landlord confirmed that he failed to return the Tenant's deposits and has not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, as required under section 38(1) of the *Act*.

As discussed during the hearing, the Tenant's security and pet damage deposit are held in trust for the Tenant by the Landlords. The Landlords may only keep all, or a portion, of these deposits through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator.

In this case the Landlord alleged that the Tenant failed to clean the rental unit at the end of the tenancy. He was also unclear whether the Tenant paid the full amount of rent for December 2018. In any event, if the Landlords believe 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 deposits. In this case I find that the Landlords did not have any such authority to keep any portion of the deposits.

By failing to return the deposit or make an application for dispute resolution within 15 days of the end of the tenancy, the Landlords must now, pursuant to section 38(6) of the *Act*, pay the Tenant the sum of **\$1,300.00**, comprised of double the security deposit and pet damage deposit paid ($\$325.00 + \$325.00 = \$650.00 \times 2 = \$1,300.00$).

As the Tenant has been successful in her application I find she is also entitled, pursuant to section 72 of the *Act*, to recover the \$100.00 fee for filing this Application for a total award of **\$1,400.00**.

The Landlords are at liberty to apply for monetary compensation from the Tenant for unpaid rent or cleaning and repair of the rental unit. However, this does not affect their obligation to pay the \$1,400.00 awarded to the Tenant pursuant to this my Decision. As well, the parties are reminded that should the Landlords make such an Application for Dispute Resolution they must file all evidence in support or response to that application, as the materials filed in relation to the application before me will not be considered by the presiding Arbitrator unless they are filed in support or response to the Landlords' possible application.

Conclusion

The Tenant's application for return of double her security and pet damage deposit and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$1,400.00**. The Tenant must serve a copy of the Order on the Landlords as soon as possible, and should the Landlords fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: June 5, 2019

Residential Tenancy Branch