



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE AXFORDS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 18, 2019, in which the Tenant requested return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 2, 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 as well as their understanding that this Decision would be emailed to them.

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 the tenancy began May 1, 2017. Monthly rent was \$2,500.00 and the Tenant paid a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit.

The tenancy ended on April 30, 2019 at which time the parties conducted a move out condition inspection. The report was provided in evidence and which confirmed the Tenant provided her forwarding address to the Landlord at that time.

The Landlord sent an electronic transfer in the amount of \$1,345.00 to the Tenant. The Tenant stated that she did not agree to the deductions made by the Landlord. The Tenant also testified that the Landlord failed to make an application for dispute resolution.

The Landlord submitted that as the Tenant signed the move out condition inspection report, which contained notations about the condition of the rental unit, the Landlord believed she agreed to deductions to her security and pet damage deposit. To this end she drew my attention to section Z of the move out inspection report (the portions which were filled out are noted in italics);

END OF TENANCY

Z. Damage to rental unit or residential property for which the tenant is responsible:

*2nd bedroom carpet stained. / 1 Garage remote.
Wall painting throughout/Dirty spots to be cleaned*

1. I (Tenant's name) x [Tenant's name printed]

- ☐ Agree that this report fairly represents the condition of the rental unit
☐ Do not agree that this report fairly represents the condition of the rental unit for the following reasons:

2. I (Tenant's name) agree to the following deductions to my security and or pet damage deposit:

3.

Security deposit: *TBD*
Date: (dd/mm/yy):

Pet Damage Deposit:
Signature of Tenant:

Analysis

The Tenant applies for return of double her security deposit and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which 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.

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

I find that the Landlord received the Tenant's forwarding address in writing on April 30, 2019—the date the parties completed the move out condition inspection report.

The evidence confirms that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

I accept the Tenant's evidence that she did not agree to the Landlord retaining any portion of her security and pet damage deposit. While the Tenant may have signed the move out condition inspection report, I find she did not agree to a specific sum being retained from her deposits. Section Z of the report, which was reproduced in this my Decision, was incomplete and not signed by the Tenant. I disagree with the Landlord that this section of the report, or any other section of the report, confirms the Tenant's agreement to deductions to her deposits.

Section 38(4) references "an amount" and "the amount" which indicates a *specific* amount. I find that this compels a landlord to seek a tenant's consent to specific amount which may be deducted, not an amount "to be determined" at the sole discretion of the Landlord. The onus was on the Landlord to seek the Tenant's consent to retaining a specific amount of her deposits, failing which the Landlord was required to return the deposits to the Tenant or make an application for dispute resolution as required by section 38(1) of the *Act*. In this case the Landlord did neither.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord 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.

As discussed during the hearing, if the Landlord 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 Landlord cannot make a claim for monetary compensation through the Tenant's Application; she must make her own claim.

I therefore find the Tenant is entitled to return of double her security and pet damage deposit as provided for in section 38(6) of the *Act*. As the Tenant has received some amount from the Landlord, that amount must be considered in any calculation of what is owing to her.

In such situations guidance is found in the *Residential Tenancy Policy Guidelines; Guideline 17—Security Deposit and Set Off* provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- **Example A:** A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

- **Example B:** A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

- **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.

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 \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

Note: Interest is not included in the examples above, for the sake of simplicity. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

The case before me most closely resembles Example A above; as such, I find the Tenant is entitled to the sum of **\$3,655.00** calculated as follows:

\$2,500.00 (total deposits paid)
x 2

= \$5,000.00
- \$1,345.00 (amount already paid to Tenant)
= \$3,655.00

As the Tenant has been successful in her Application, I also find, pursuant to sections 38 and 72 of the *Act* that the Tenant is entitled to recover the \$100.00 filing fee for a total award of **\$3,755.00**.

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 **\$3,755.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord 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: December 3, 2019

Residential Tenancy Branch