



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 29, 2020 the Dispute Resolution Package and evidence the Tenant submitted with the Application was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 02, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via registered mail, on November 02, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$987.50 was paid;
- a pet damage deposit of \$987.50 was paid;
- this tenancy ended on June 30, 2020;
- the Tenant provided a forwarding address, in writing, on June 30, 2020; and
- the Landlord returned the full security and pet damage deposit on July 16, 2020.

The Agent for the Landlord stated that:

- the Tenant agreed to allow the Landlord to retain \$500.00 from the security deposit when she signed the condition inspection report that was completed on June 30, 2020;
- a copy of the final condition inspection report was submitted in evidence;
- the Landlord inadvertently returned the full security deposit/pet damage deposit, without deducting the aforementioned \$500.00;
- the deposit refund was mailed on July 16, 2020;
- all of the employees working for the Landlord are working remotely, due to the COVID-19 pandemic;
- the return of the security/pet damage deposit was initiated on July 10, 2020 by a person working in one remote location;
- the refund cheque was issued by a person working in a separate remote location;
- the delay in returning the deposits was the result of administrative delays directly related to working remotely due to the COVID-19 pandemic; and
- the Landlord would like the deadline for returning the deposits extended due to the COVID-19 pandemic.

Legal Counsel for the Landlord stated that on November 02, 2020 the Landlord filed an Application for Dispute Resolution in which the Landlord applied to recover liquidated damages.

The Tenant stated that:

- she signed the final condition inspection report but in doing so, she did not intend to authorize the Landlord to retain \$500.00 from her deposits;
- she did not initial the area near the reference to the Landlord retaining \$500.00 from the security deposit, which she would have initialed if she would have initialled if she was agreeing to the \$500.00 deduction; and
- she was not notified there would be a delay in the return of her security/pet damage deposit due to the COVID-19 pandemic, so she believes she is entitled to the return of double those deposits.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that except as provided in subsection (3) or (4)(a), 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 either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

Section 38(4)(a) of the *Act* permits a landlord to 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.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant gave the Landlord permission to retain \$500.00 from her security deposit. In reaching this conclusion I was heavily influenced by the Tenant's testimony that she signed the final condition inspection report but in doing so, she did not intend to authorize the Landlord to retain \$500.00 from her deposits, and that she did not initial the area near the reference to the Landlord retaining \$500.00 from the security deposit, which she would have initialled if she would have initialled if she was agreeing to the \$500.00 deduction.

I find that the final condition inspection report, which was submitted in evidence, corroborates the testimony of the Tenant. There is an entry on the report which declares that the Tenant accepts that \$500.00 will be deducted from her security/pet damage deposit and there is a space beside that entry which the Tenant is to initial if she agrees to the deduction. There is a checkmark of some sort in that space which does not, in my view, appear to be the Tenant's initial. As the evidence does not establish that the Tenant initialled this entry, I cannot conclude that she agreed in writing to the \$500.00 deduction.

The Tenant has signed the final condition inspection report in the area which indicates she agrees the report fairly represents the condition of the unit. This signature does not, in my view, constitute written consent to the \$500.00 deduction.

On the basis of the undisputed evidence, I find that this tenancy ended on June 30, 2020 and that the Landlord received a forwarding address for the Tenant, in writing, on June 30, 2020. I therefore find that the Landlord was required to either file an Application for Dispute Resolution or to return the deposits by July 15, 2020, pursuant to section 38(1) of the *Act*.

On the basis of the testimony of the Agent for the Landlord and the cheque submitted in evidence, dated July 16, 2020, I find that the security deposit and the pet damage deposit was returned to the Tenant when it was mailed on July 16, 2020. I find that the

relevant date in regard to the return of the deposits, pursuant to section 38 of the *Act*, is when the cheque was mailed to the Tenant, rather than when the cheque was received by the Tenant.

I find that the Landlord did not comply with section 38(1) of the *Act*, as the security/pet damage deposits were not returned by June 15, 2020 nor was an Application for Dispute Resolution claiming against the deposits filed by June 15, 2020.

Section 66(1) of the *Act* permits me to extend a time limit established by the *Act* in exceptional circumstances. In regard to the term "exceptional services, Residential Tenancy Branch Policy Guideline #36 reads:

...the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

On the basis of the testimony of the Agent for the Landlord, I accept that the all of the employees working for the Landlord are working remotely, due to the COVID-19 pandemic; that the return of the security/pet damage deposit was initiated on July 10, 2020 by a person working in one remote location; and that the refund cheque was issued by a person working in a separate remote location. Regardless of these facts, I find that working remotely does not constitute an exceptional reason for failing to comply with the deadline for returning the deposits. Given the technology that is currently available to businesses, I find that with reasonable diligence a business should be able to coordinate the return of the deposits within fifteen days even when employees are working remotely. I therefore do not find it appropriate to extend the deadline for returning the security/pet damage deposits, pursuant to section 66(1) of the *Act*.

I have considered Residential Tenancy Branch Policy Directive 2020-02, which addresses issues regarding extending deadlines for filing an Application for Dispute Resolution and serving hearing documents/evidence during the COVID-9 pandemic. It does not address extending deadlines for returning security or pet damage deposits.

Residential Tenancy Branch Policy Directive 2020-02 recognizes that some individuals may have difficulty filing an Application for Dispute Resolution and/or serving parties with documents related to a hearing because of specific health concerns that may require them to self-isolate or avoid public places. As such, the document directs that Arbitrators consider the COVID-19 pandemic as an exceptional circumstance when determining

whether to extend a deadline for filing an Application for Dispute Resolution and/or serving documents related to a hearing.

This is entirely different, in my view, than returning a security/pet damage deposit where one employee can communicate with another employee by telephone or email, and the deposits can simply be returned by regular mail. I therefore find that Residential Tenancy Branch Policy Directive 2020-02 is not applicable in these circumstances.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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/pet damage deposit, which is \$3,950.00.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing this Application.

Conclusion:

The Tenant has established a monetary claim of \$4,050.00, which includes double the security/pet damage deposit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. As the Landlord has already returned the \$1,975.00 security/pet damage deposit, I grant the Tenant a monetary Order for the remaining \$2,075.00. 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 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: November 17, 2020

Residential Tenancy Branch