Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MND

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). On October 1, 2013, the tenants applied for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

On December 5, 2013, and eight days before this hearing, the landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 1, 2013. I am satisfied that the tenants served this package and their written evidence to the landlord in accordance with the *Act*.

Although the landlord's application had been scheduled to be heard at the same time as the tenants' application, I had not received a copy of the landlord's application at the time of this hearing. The tenants' agent confirmed that the tenants had received a copy of the landlord's dispute resolution hearing package and written evidence by fax on December 6, 2013, and delivered to the tenants by courier on December 9, 2013. While the landlord did not serve her hearing and evidence packages to the tenants in one of the ways set out in the *Act*, I am satisfied that the tenants have received copies of these documents.

The tenants' agent requested that only the tenants' application be heard. He also introduced a motion that the landlord's application for a monetary award be extinguished because the landlord had not taken the required action under the *Act* to enable to claim against the security deposit for this tenancy. Although the landlord could not apply to keep the security deposit, I advised the parties that the landlord was still within her rights to apply for a monetary award for damage. Since the landlord's application was properly before me, I noted that I would hear evidence with respect to both applications and render my decision after I received the Residential Tenancy Branch's (the RTB's) copy of the landlord's application and written evidence submitted in support of that application. Shortly after this hearing, I received the landlord's application and written evidence, which I have taken into account in reaching my decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Are the tenants entitled to a monetary award equivalent to double the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for their applications from one another?

Background and Evidence

This 11 ½ month fixed term tenancy began on August 8, 2012, with the tenants taking possession as of August 15, 2012. The tenants vacated the rental unit on July 29, 2013, two days before the tenancy was scheduled to end. The landlord's agent said that the landlord took possession of the rental unit before August 1, 2013. Monthly rent was set at $1,400.00, payable in advance on the 28th of each month. The landlord continues to hold the tenants' $700.00 security deposit paid on August 8, 2012.

The parties agreed that they undertook a joint condition inspection on August 8, 2012, at which time the landlord provided the tenants with a copy of the report of that inspection. The landlord's agent said that the landlord sent four email requests to the tenants to conduct a joint move-out condition inspection, but that the tenants never agreed to conduct a move-out inspection. The tenant's agent maintained that the landlord did not issue two written notices seeking a final inspection of the premises. Although the landlord's agent testified that he and his wife, the landlord, inspected the rental unit at the end of this tenancy and prepared a report, they did not provide a copy of that report to either the tenants or the RTB.

The tenants' agent maintained that the tenants provided their forwarding address in writing at the time the tenancy began when they identified Tenant TS's mailing address

as being an address in Richmond, B.C. where he receives his mail. The tenants' agent asserted that this mailing address remains Tenant TS's mailing address where the landlord should have sent the security deposit within 15 days of the end of this tenancy.

The landlord maintained in her application for dispute resolution and in her agent's sworn testimony that the tenants did not provide the landlord with a forwarding address where the security deposit could be returned. The landlord's agent said that he and the landlord were aware that the tenants had not moved to Richmond but had remained in the same Vancouver Island community as the dispute address. The landlord's agent maintained that the tenants did not advise the landlord that the forwarding address remained the same as when this tenancy began.

The tenants' application for a monetary award of $1,400.00 sought a return of double their $700.00 security deposit as they alleged that the landlord had not returned their security deposit in full within the time frame required under section 38 of the *Act*.

The landlord's application for a monetary award of $552.11 included the following items attached to her application for dispute resolution:

Item	**Amount**
Carpet Cleaning	$169.35
Bath Drain Assembly	53.96
Plumber to Replace Drain Assembly	60.00
Rugs in lieu of Carpet Repair	67.05
Shower Head Bracket	31.75
Labour Cost for Repairs	120.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	**$552.11**

The landlord's application indicated that the landlord was asking for authorization to retain the above amount from the tenants' $700.00 security deposit, leading to the return of $147.89 to the tenants.

Analysis – Security Deposit

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 deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. 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 tenant's 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 tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or 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."

There is undisputed evidence that the landlord did not return the security deposit in full within 15 days of the end of this tenancy. Similarly, the landlord did not obtain any written authorization to retain any portion of the tenants' security deposit within 15 days of the end of the tenancy. The issue in dispute is whether the tenants provided their forwarding address in writing to the landlord.

The following portion of section 38(1) of the *Act* specifies when the 15 day time period for the landlord's return of the security deposit begins:

> ***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 *Act* does not state that the tenant has to provide the landlord with their forwarding address necessarily in writing at the end of the tenancy. The forwarding address provided by the tenants at the time they signed their Residential Tenancy Agreement (the Agreement) remains the same as the mailing address they identified in their October 1, 2013 application for dispute resolution. However, it also seems possible that the landlord may very well have questioned whether the mailing address identified on the Agreement remained the correct mailing address for the return of the tenants' security deposit.

As there was at least some validity to the positions taken by both parties with respect to whether the tenants provided their forwarding address to the landlord in writing, I have looked at the other written evidence and sworn testimony to assist in making a finding on this issue. The tenants supplied a number of emails, the authenticity of which was not disputed at the hearing. These emails reveal that the landlord was not delaying returning the tenants' security deposit because she was uncertain as to whether she had their correct forwarding address. Rather, these emails reveal that the landlord engaged in an email exchange with a representative of the tenants regarding damage

she believed the tenants were responsible for causing during this tenancy. This email exchange extended from at least July 31, 2013 until September 11, 2013. At no time was there any question raised in these emails about the tenants' forwarding address. In addition, I note that the tenants identified the same mailing address in their October 1, 2013 application for dispute resolution as that which they entered on the Agreement. After receiving this application, the landlord did not take any action to either return the tenants' security deposit or apply for dispute resolution to retain it until December 5, 2013. I find that this failure to take action is consistent with the information in the emails and further confirms that the reason for the landlord's failure to return the security deposit in full related to the landlord's ultimately unsuccessful desire to negotiate an agreement whereby the landlord could retain a portion of the tenants' security deposit for damage arising out of this tenancy. For these reasons, I find that the landlord had the tenants' forwarding address, which remained the same throughout this tenancy and even after the tenants applied for dispute resolution. Under these circumstances, I find that the triggering date for the landlord to take action within 15 days was July 29, 2013, the date when this tenancy ended.

Section 38(6) of the *Act* reads as follows:

> *38 (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 following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would also 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *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.*

As the landlord has not returned the security deposit within 15 days of the end of this tenancy, I therefore find that the tenants are entitled to a monetary order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable over this period.

Analysis- Landlord's Application for a Monetary Award for Damage

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Although the landlord cannot claim against the security deposit, this does not preclude the landlord from submitting a separate application for a monetary award for damage arising out of this tenancy.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of August 8, 2012 entered into evidence by the landlord and signed by both parties showed that with very few exceptions the rental unit was in acceptable condition when this tenancy began. However, no joint move-out condition inspection was conducted, no report was issued by the landlord, and conflicting evidence was provided by the parties to explain why this did not occur.

Without a move-out condition inspection report, there is a level of uncertainty as to the true condition of the rental unit at the end of this tenancy. However, the tenant's agent did not dispute the claim by the landlord and her agent that section 5 of the Addendum to the Agreement required professional carpet cleaning at the end of this tenancy. Similarly, the tenant's agent did not dispute the landlord's claim that the tenants did not retain professional carpet cleaners at the end of this tenancy, nor the landlord's claim

that she incurred costs of $169.35 for this cleaning. Based on the landlord's undisputed evidence regarding the lack of carpet cleaning at the end of this tenancy, I allow the landlord a monetary award of $169.35 to have the carpet professionally cleaned at the end of this tenancy.

Based on the undisputed sworn testimony of the landlord's agent and the undisputed written evidence of receipts for the landlord's payment of $53.96 for a bath drain assembly and $60.00 for a plumber's services to replace the drain assembly, I allow the landlord's application for a monetary award for both of the above items. As I find that the landlord has taken measures to mitigate the losses for the repair of the carpet, I also allow the landlord's application for a monetary award of $67.06 to compensate the landlord for her purchase of area rugs to cover the damaged carpet areas. I also allow the landlord's $31.75 claim for the purchase of a shower head bracket.

Although I have reviewed the landlord's claim for $120.00 in labour costs, I find that the landlord has not provided adequate evidence to substantiate this claim for labour costs or what it entailed. Since most of the work claimed was undertaken by others (e.g., a plumber; a professional carpet cleaner), the landlord's claim for labour costs is somewhat unclear. As I am not satisfied that the landlord has produced sufficient evidence regarding this part of her claim, I dismiss her claim for labour costs without leave to reapply.

As both parties have been successful in their claims, I make no order with respect to their claim for the recovery of their filing fees.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover double their security deposit less an amount awarded to the landlord for damage arising out of this tenancy:

Item	**Amount**
Return of Double Security Deposit as per section 38 of the Act ($700.00 x 2 = $1,400.00)	$1,400.00
Less Carpet Cleaning	-169.35
Less Bath Drain Assembly	-53.96
Less Plumber to Replace Drain Assembly	-60.00
Less Rugs in lieu of Carpet Repair	-67.05
Less Shower Head Bracket	-31.75
Total Monetary Order	**$1,017.89**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 18, 2013

Residential Tenancy Branch