Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD
THE BREAKERS HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for return of all or a portion of her pet damage deposit, pursuant to section 38.

The landlord's two agents, AA and AW, representing the landlord company HPL ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. No one appeared on behalf of the former landlord, TBHL.

The tenant testified that she served the landlord with a copy of the application for dispute resolution hearing package ("Application") by placing it in the mail slot of the landlord's office door on July 9, 2014. Although this method of service delivery is not one that is permitted under section 89 of the *Act*, the landlord AA confirmed that the landlord received the tenant's hearing package and was notified of this hearing. Based on the sworn testimony of the parties and in accordance with my authority under section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenant's Application and that there would be no denial of natural justice in proceeding with this hearing and considering the tenant's Application.

The Application contained a copy of a move-in and move-out condition inspection report which was difficult to read because the writing was very faint. The landlord was served with a copy of the report. The landlord should also have an original of the report in its files but the landlord AA could not confirm this during the hearing as he did not have the report in his possession at the time. The tenant agreed during the hearing, to scan and e-mail her original copy of the condition inspection report to the e-mail address provided by the landlord AA during the hearing. I requested that the tenant e-mail a copy, rather

than send another copy by facsimile, in order to ensure that the landlord's copy would be more legible. In accordance with the RTB Rules of Procedure, I am permitted to request an original copy of the document, as per Rule 3.8. As such, the tenant confirmed that she would bring in the original condition inspection report to an Residential Tenancy Branch (RTB) office on November 21, 2014. I received an original condition inspection report from the tenant on November 24, 2014. The tenant further agreed that she would attend at the landlord's office personally to show the landlord the original condition inspection report, after I have completed my review of it, in the event that the e-mailed copy to the landlord, is still illegible.

I did not have copies of the various documents from the tenant's Application on file. The landlord AA confirmed that he had copies of all documents in the tenant's Application. The tenant stated that she would send copies of the following documents to the RTB, via facsimile, on November 20, 2014, after the hearing concluded. I received copies of all required documents on November 20, 2014. These documents include: a receipt for the full pet damage deposit paid; the cheque stub and breakdown of the security and pet damage deposits returned to the tenant by the landlord; a complete move-in and move-out condition inspection report; and a notice to vacate given by the tenant to the landlord. I have reviewed all of these above-noted documents before writing this decision.

During the hearing, the tenant amended her application to correct the spelling of the landlord company's first name (HPL) and to correct to the full name of the previous landlord (TBHL) named in this Application.

The decision below reflects this hearing and orders made solely against the landlord HPL, and not against the landlord TBHL.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of all or a portion of her pet damage deposit?

Background and Evidence

The landlord AA testified that the landlord company HPL ("the landlord HPL") purchased the rental property from the former landlord company, TBHL ("former landlord"), on August 1, 2013. The landlord AA testified that HPL took over all of the tenancy leases in place at the time, from the former landlord, when the rental property was purchased.

He also confirmed that all funds paid for these tenancies were transferred to HPL's accounts.

The tenant testified that this periodic tenancy began on June 1, 2011 and ended on June 3, 2014. She provided a written tenancy agreement with her Application. Monthly rent was payable in the amount of $925.00 on the first day of each month. A security deposit of $462.50 was paid by the tenant on May 26, 2011 and was returned to her in full by the landlord. The tenant provided a copy of the cheque stub and breakdown from the landlord, both dated June 10, 2014, for the return of this full security deposit, with her Application.

The tenant vacated the rental unit, upon providing notice, which was accepted by the landlord on May 23, 2014. The landlord AA testified that the tenant was permitted to vacate the rental unit on June 3, 2014, rather than on May 30, 2014. The tenant provided a forwarding address to the landlord on May 23, 2014, with her notice to vacate. She provided a copy of this "resident notice to vacate," which confirms the above details, with her Application.

A condition inspection report, consisting of two pages, was prepared upon move-in and move-out. Both the tenant and former landlord signed the report and participated in both inspections. The move-in inspection occurred on June 7, 2011 and the move-out inspection occurred on June 4, 2014. However, upon review of the very faint original move-out condition inspection report, there are no signatures, dates or checkmarks to show that a move-out inspection was completed. Despite this, given the sworn testimony of both parties, I am satisfied that a move-out inspection was completed as indicated above on June 4, 2014.

The tenant testified that she paid a pet damage deposit in the total amount of $462.50 cash to the former landlord. She testified that she had permission from the former landlord to keep a cat and dog in her rental unit. She states that she was permitted by the former landlord to pay the pet damage deposit in two installments. The tenant testified that she paid $280.00 on or about June 1, 2011, although she could not recall the exact date, and $182.50 on September 3, 2011, to the former landlord. She stated that she paid this $182.50 final installment to the former landlord's agent KR ("KR") at her rental unit, which was provided as the former landlord's address for tenants to make tenancy-related payments. The tenant testified that she received a receipt from KR for payment of the full pet damage deposit of $462.50 on September 3, 2011, when she made the final cash payment to KR for the pet damage deposit. The tenant provided a copy of this receipt, dated September 3, 2011, which states that $462.50 for "pet damage deposit" was "paid in full," with her Application. The receipt is handwritten and

signed by KR on behalf of the former landlord and the company name of “TBH” is included on the receipt. The amount of $462.50 is handwritten in words and numbers on the receipt.

It is undisputed that the tenant was provided with a cheque from the landlord, in the amount of $280.00, for return of a portion of her pet damage deposit, at the end of this tenancy. Both parties confirmed that $182.50 was not returned to the tenant, after the tenancy concluded. The tenant seeks return of the $182.50 from her pet damage deposit, in her Application.

The tenant provided a copy of this receipt to the landlord’s agent, the resident manager, on June 11, 2014, eight days after she vacated the rental unit and over three weeks prior to filing her Application for this hearing. Her application was filed with the RTB on July 4, 2014. The landlord then advised the tenant that the former landlord owners were out of the country and to provide bank records from three years prior to prove that the $182.50 was paid. The tenant testified that she attempted to get bank records but was not provided any by her bank because the records dated back too far.

The landlord disputes that the tenant paid the $182.50 to the former landlord, contending that there is no proof of this pet damage deposit payment. The landlord states that the signature of KR on the receipt for the pet damage deposit is different than the signature of KR on the tenancy agreement, including the “K” and the last name. Initially, the landlord AA testified that he was accepting the signature of KR as authentic on the pet damage deposit receipt. However, when questioned as to whether he was disputing that the full amount of the pet damage deposit was paid, as per this receipt, the landlords AA and AW both stated that KR’s signatures did not match on the receipt and tenancy agreement. The landlords AA and AW both testified that they were disputing the authenticity of KR’s signature on the receipt, stating that anyone could have forged it.

The landlord also says that the tenancy agreement indicates that $462.50 was paid on June 15, 2011 and states “need proof 280 paid” beside this amount and date. Neither party knew the meaning of this statement. The landlord further stated that “to be paid” was written on the condition inspection report beside the pet damage deposit. The tenant stated that she corrected this statement herself. Upon viewing the original condition inspection report, “to be paid” is written on top of “Jun 15 2011,” both of which are pointing with an arrow to the amount of pet damage deposit recorded as $462.50.

The landlord AA testified that there was no pet damage, nor was he claiming any damage, to the rental unit, as a result of this tenancy. The landlord AA confirmed that he was disputing that the tenant is entitled to a return of $182.50 for the pet damage

deposit, on the sole basis that the tenant did not pay the amount to the former landlord. The landlord AA testified that HPL was given a statement of adjustments from accounting when they purchased the rental property and the only pet damage deposit paid by the tenant, as indicated on this statement, was in the amount of $280.00. He did not provide a copy of this statement at this hearing.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, agreements and reports, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant seeks the return of a portion of her pet damage deposit, in the amount of $182.50 from the landlord.

On a balance of probabilities, I find that the tenant has met her onus to prove that she paid the entire pet damage deposit to the former landlord for this tenancy. The tenant provided documentary evidence, in the form of a handwritten and signed receipt from the former landlord, to support her position. The tenant made the payment in cash to the former landlord and received a signed receipt from the former landlord, for the payment. The tenant was unable to provide bank records to prove that she made this payment; however, even if the tenant were able to provide bank records, it is unlikely that they would show a specific withdrawal of exactly $182.50. Further, bank records would likely not indicate that a specific withdrawal of cash was being made to pay for a pet damage deposit, and thus, would likely be unhelpful in any event.

At this point, the burden shifted to the landlord to prove that the tenant did not make the payment of $182.50 for the pet damage deposit. The landlord stated that there was no proof of the payment, alleging that the signature on the receipt was unauthentic or forged. The landlord did not provide any evidence or documentation to support the landlord's position in this Application. In particular, the landlord did not provide a copy of the "statement of adjustments" that the landlord referenced during the hearing, showing that only $280.00 was paid. The landlord did not provide evidence as to whether this statement showed that an outstanding balance of $182.50 was owing for the pet damage deposit; he simply referred to the payment of $280.00.

The landlord did not provide any evidence that either the current or former landlord sought payment of this $182.50 from the tenant at any time after September 3, 2011, given the landlord is alleging that it has never been paid. The reference in the tenancy agreement to "need proof 280 paid" is unclear and given that both parties agree that

$280.00 was paid for the pet damage deposit, no proof would be required. Further, there is no evidence as to when this statement was written on the tenancy agreement. The reference to the wording “to be paid Jun 15 2011” written on the condition inspection report beside the pet damage deposit does not indicate that $182.50 was outstanding or only a partial payment of $280.00 had been made. It appears that it references that the pet damage deposit would be paid on June 15, 2011. Since the move-in condition inspection report was signed on June 7, 2011 by the tenant and KR, and there are no signatures or references indicating a move-out date or that a condition inspection was done on June 4, 2014, this report was likely not updated after the tenant made her final payment of $182.50 on September 3, 2011.

No indication is made on any documents, including the tenancy agreement, the receipt, the condition inspection report, or even the cheque stub or breakdown from the current landlord, that $182.50 was outstanding. The landlord did not provide any evidence that requests were made of the tenant, at any time during the tenancy, to recover this unpaid amount of $182.50.

The landlord did not produce KR as a witness at the hearing to prove the allegation that she did not sign the receipt and that her signature was forged. The landlord did not provide any documentation or evidence to support the allegation that KR’s signature may have been forged. I examined the tenancy agreement, the receipt from KR and the condition inspection report and all signatures of KR are substantially similar to each other and I find them to be authentic. KR’s signature is, in fact, a very elaborate signature, such that attempting to forge this signature would likely be difficult. The handwriting on the receipt is very detailed, lengthy and consistent throughout the receipt. The fact that the entire amount of the pet damage deposit of $462.50 was written out in words, rather than just numbers, confirms to me that the author was likely and purposefully intending that the full amount be included rather than just a partial amount of $182.50, which is a substantially different amount and involves very different wording. Further, if a person were to attempt to forge a receipt, it is unlikely that they would handwrite in great detail all over the receipt, particularly an amount of $462.50 that can be written in simple numbers rather than lengthy words.

I do not find that the tenant forged KR’s signature on the receipt, as the tenant’s signature on the tenancy agreement and her Application, is similar to printing, rather than handwriting, and is substantially different than KR’s handwriting and signature. I find that the receipt for the pet damage deposit is authentic and not fraudulent, was provided by the former landlord to the tenant, and accurately records the full amount of $462.50 paid for the pet damage deposit for this tenancy.

Sections 35 and 36 of the *Act* require that condition inspections and reports be made at the beginning and end of a tenancy before pet damage deposits can be returned. Both parties testified that move-in and move-out condition inspections and reports were completed for this tenancy and both the former landlord and tenant attended both inspections. The landlord confirmed that no pet damage occurred and no claims were being made by the landlord in that regard.

Section 38 of the *Act* requires the landlord to either return all of a tenant's pet damage deposit or file for dispute resolution for authorization to retain a pet damage deposit within 15 days after the later of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6)(b) of the *Act* equivalent to double the value of the pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the pet damage deposit to offset damages or losses arising out of the tenancy. The landlord did not file an application for dispute resolution to keep the pet damage deposit, at any point prior to this hearing. Both parties confirmed that the $182.50 was not returned to the tenant for any pet damage deposit, after the tenancy concluded. Both parties confirmed that the tenant did not give the landlord permission to retain any amount from her pet damage deposit.

I find that the landlord continues to hold a portion of the tenant's pet damage deposit in the amount of $182.50. Over that period, no interest is payable on the landlord's retention of the pet damage deposit. For the reasons outlined above, and in accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to double the value of the overall pet damage deposit less the $280.00 returned by the landlord HPL to the tenant.

Conclusion

I issue a monetary Order in the tenant's favour against the landlord HPL under the following terms, which allows the tenant an award of double her pet damage deposit, less the amount already returned to her:

Item	Amount
Return of Double ~~Security~~ **Pet Damage** Deposit as per section 38 of the Act ($462.50 x 2 = $925.00)	$925.00
Less Returned Portion of ~~Security~~ **Pet Damage** Deposit	-280.00
Total Monetary Order	**$645.00**

The tenant is provided with a monetary order in the amount of $645.00 in the above terms and the landlord HPL must be served with this Order as soon as possible. Should the landlord HPL fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 27, 2014

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON DECEMBER18, 2014
AT THE PLACES INDICATED.