



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, FF
For the landlord: MNSD, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for a return of their security deposit and pet damage deposit, doubled, and for recovery of the filing fee paid for this application.

The landlords applied for authority to retain the tenants’ security deposit and pet damage deposit, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The listed parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

I have reviewed the oral, written, photographic, and digital evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Are the tenants entitled to a return of their security deposit and pet damage deposit, doubled, and to recovery of the filing fee paid for this application?
2. Are the landlords entitled to permanently retain the tenants' security deposit and pet damage deposit, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on July 15, 2013, ended on or about March 4, 2015, monthly rent began at \$3000.00, was increased to \$3100.00, and that the tenants paid a security deposit and pet damage deposit of \$1500.00 each, both of which have been retained by the landlords.

Tenants' application-

The tenants' monetary claim is in the amount of \$6306.00, comprised of their security deposit of \$1500.00, doubled to \$3000.00, their pet damage deposit of \$1500.00, doubled to \$3000.00, and \$306.00 for a claimed overpayment of rent.

The tenant submitted that they provided the landlord with their written forwarding address on March 13, 2015, in a letter sent by registered mail on that date. The landlord has not returned any portion of their security deposit or pet damage deposit, according to the tenant.

As to the claimed overpayment of rent, the tenant submitted at the end of the original fixed term of June 30, 2014, the parties negotiated the terms of their tenancy agreement, wherein the parties agreed to another fixed term to end on June 30, 2015, and to increase the monthly rent to \$3100.00, although the landlord wanted an increase to \$3200.00 per month.

According to the tenant, the landlord was only entitled to increase the rent by \$66.00 per month pursuant to the Act and the Residential Tenancy Regulation, instead of \$100.00, resulting in an overpayment of \$34.00 per month from July 2014 through March 2015.

The tenants' relevant documentary evidence included, but was not limited to, copies of email and text message communication between the parties, a copy of the written forwarding address, and a copy of an online listing of the rental unit, showing the requested monthly rent of \$3400.00 and one parking space. The tenants also submitted digital evidence, which the landlord confirmed he was able to view.

Landlord's response-

The landlord confirmed receipt of the tenants' written forwarding address on March 18, 2015, by registered mail.

As to the claimed overpayment of rent, the landlord submitted that the parties negotiated the increase of \$100.00 per month; however, when the tenant brought to his attention that he was only entitled to increase the monthly rent by \$66.00 per month, he offered to pay the tenants the difference, according to the landlord. The landlord submitted further that when he offered to pay the difference, the tenant declined his offer.

Landlords' application-

The landlords' monetary claim is \$3100.00, comprised of loss of rent revenue for April 2015.

In support of their application, the landlord submitted that the tenants vacated the rental unit in March 2015, and placed a stop payment on their monthly rent cheque for April 2015, causing a loss of rent revenue for that month.

The landlord submitted further that the tenants failed to serve him a proper notice of their intent to vacate the rental unit, as the notice was sent in an email on January 30, 2015, and was prior to the end of the fixed term. The landlord submitted further that his agent began immediate efforts to market and advertise the rental unit, and was successful in re-renting the rental unit for May 1, 2015.

The landlord agreed that his agent first advertised the rental unit for \$3400.00 and one less parking spot, but that when the tenant informed him this was improper, the landlord's agent reduced the requested monthly rent in the advertisements to \$3100.00 and 2 parking spots.

The landlord submitted that the tenants did not have the rental unit in a showable condition to begin with, and that they were not cooperative with his agent, delaying their attempts to find a new tenant.

The landlord submitted that it was not his intent to deprive the tenants of their security deposit and pet damage deposit, but had attempted to negotiate with the tenants to keep the deposits in lieu of a rent payment.

The landlords' relevant documentary evidence included a copy of the renewal of the written tenancy agreement showing an increase of monthly rent to \$3100.00 and another fixed term through June 30, 2015, signed by the parties, copies of email communication between the parties, and copies of communication between the landlord and his agent.

Tenant's response-

The tenant submitted that they offered to assist in marketing the rental unit, but that the landlord's agent declined their offer.

The tenant submitted further that the landlord and his agent improperly marketed the rental unit for \$3400.00 per month and 1 parking space, instead of the monthly rent the tenants paid, \$3100.00, with the use of 2 parking spaces. The tenant referred to his documentary evidence showing the advertisement, stating that he printed the advertisement at the end of March 2015.

Analysis

Tenants' application-

Security deposit and pet damage deposit-

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution claiming against the security deposit and/or pet damage deposit.

In the case before me, the undisputed evidence was that the tenancy ended on or about March 4, 2015, the tenants provided their written forwarding address by registered mail on March 13, 2015, and the landlord confirmed receipt of the written forwarding address on March 18, 2015. Therefore the landlord had until April 2, 2015, to file an application

for dispute resolution claiming against the tenants' security deposit and pet damage deposit or to return the deposits in full; however, the landlords did not file their application for dispute resolution until June 15, 2015.

Section 38(6) of the *Act* states that if a landlord fails to comply or follow the requirements of section 38(1), then the landlord must pay the tenants double the amount of their security deposit and pet damage deposit.

I therefore approve the tenants' claim for a return of their security deposit and pet damage deposit, doubled.

Overpayment of rent-

Under section 43 of the *Act*, among other things, a landlord may impose a monthly rent increase only in the approved amounts, using the proper form as mentioned in section 42 of the *Act*.

In the case before me, I do not find that the landlord imposed a rent increase as contemplated under the *Act*; rather I find the parties negotiated the terms of their tenancy agreement, resulting in a new tenancy agreement with new materials terms being formed. In this case, the tenant agreed to that amount, and I therefore find insufficient evidence to support that the landlord illegally increased the monthly rent.

I therefore dismiss the tenants' monetary claim for a rent overpayment of \$306.00.

As I have granted the tenants' application for a return of their security deposit and pet damage deposit, doubled, I approve their request to recover their filing fee of \$100.00, pursuant to section 72(1) of the *Act*.

Due to the above, I find the tenants are entitled to a total monetary award of \$6100.00, comprised of their security deposit of \$1500.00, doubled to \$3000.00, their security deposit of \$1500.00, doubled to \$3000.00, and recovery of their filing fee of \$100.00.

Landlords' application-

Under section 7(1) of the *Act*, if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the *Act*, an arbitrator may determine the amount of the damage or loss resulting

from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term, or here, June 30, 2015.

As to the tenants' emailed notification to the landlords that they were vacating the rental unit, in the case before me, I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the evidence of both parties.

Although the Act, section 88, does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' emailed notification that they were vacating the rental unit, with the landlord's confirmation, sufficiently served, pursuant to section 71 of the Act.

In the case before me, I accept that the tenants provided insufficient notice to the landlords that they were ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term pursuant to their contract, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlords failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of rent revenue. I reached this conclusion after a review of the tenants' documentary evidence, which shows that the landlord advertised the rental unit for a substantial increase in monthly rent and one less parking space. I would expect the landlord, in order to minimize his loss, would advertise the rental unit for the same price and amenities, rather than at a substantial increase and reduced amenities. I find it reasonable that rather than increase the monthly rent, a landlord would decrease the requested monthly rent after a period of time in order to more promptly attract new tenants, and then seek the monthly rent differential from the tenants.

Although the landlord submitted that he had his agent immediately change the terms of the advertisement when notified by the tenant, there was no documentary evidence that this occurred earlier than the end of March, 2015, to disprove the evidence of the tenant. I therefore found it just as likely as not that the rental unit was advertised for at least 2 months at the substantially increased monthly rent and 1 less parking space.

Due to the above, I find the landlord submitted insufficient evidence that he took reasonable steps to minimize his loss, and I therefore dismiss his claim for loss of rent revenue for April 2015, in the amount of \$3100.00.

I likewise dismiss the landlords' request to recover the filing fee for their application.

Both applications-

As I have granted the tenants a monetary award of \$6100.00 and dismissed the landlords' application claiming against the tenants' security deposit and pet damage deposit, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$6100.00, which is enclosed with the tenant's Decision.

Should the landlords fail to pay the tenants this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application has been granted in large part and they have been awarded a monetary order of \$6100.00.

The landlords' application has been dismissed.

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: September 18, 2015

Residential Tenancy Branch

