



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This was a cross application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and damage or loss under the Act, compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting return of double the security and pet deposits paid and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The female tenant, M.T., provided affirmed testimony confirming that her spouse, B.M. was served with the hearing documents via registered mail on October 22, 2015. Therefore, I find, pursuant to section 89 of the Act that the male respondent, B.M., has been served with Notice of this hearing.

Preliminary Matters

The tenant confirmed receipt of the landlords' 29 pages and 17 photographs of evidence on April 20, 2016. The evidence was left for each tenant at the tenants address. The evidence included the only detailed calculation of the claim given to the tenants.

The landlord said that he served the evidence in accordance with information he obtained from a Residential Tenancy Branch (RTB) Fact Sheet, issued in 2011. It was

explained that the RTB Rules of Procedure were changed in October 2015 and that the rules related to service of evidence had been altered.

Section 2.5 of the RTB Rules of Procedure provides:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;*
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- copies of all other documentary and digital evidence to be relied on at the hearing.*

The application served to the tenants in October 2015 did not include a detailed calculation of the monetary claim and did not supply any written evidence. Section 3.14 of the Rules provides:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

The evidence all appeared to have originated in 2015. Therefore, as the landlords' evidence was not served at least 14 days prior to the hearing I determined that the evidence would be set aside. Further, as the landlord failed to provide a detailed calculation of the monetary claim I determined that the claim could not proceed. The tenants had not been given adequate time to submit a written rebuttal. Therefore, the landlord's application is dismissed with leave to reapply within the legislated time limit.

I have not found there was any intentional neglect on the part of the landlord; the landlord believed he was complying with the document service requirements. Both parties have been informed of the requirement to the extent possible, to serve all evidence and a detailed calculation of a claim at the time an application is made.

The hearing proceeded to consider the tenants' claim for the security and pet deposits.

Issue(s) to be Decided

Are the tenants entitled to return of double the \$575.00 pet and security deposits?

Background and Evidence

The tenants moved into the rental unit in 2012; they have signed several fixed term agreements. One tenancy commenced on June 1, 2015, ending May 31, 2016; at which point the tenants were required to vacate. The landlord and tenant B.M. then signed another two month fixed term tenancy, ending July 31, 2015, at which point the tenants were to vacate. Tenant M.T. did not sign the final two month tenancy agreement.

A move-in condition inspection report was not completed at the start of the last tenancy or the previous tenancy. The landlord's application did include a claim for unpaid rent; as the rent for the last two months of the tenancy had been increased by \$50.00 per month and the landlord submits that sum was not paid for either month.

There was no dispute that tenant B.M. and the landlord met at the rental unit on July 31, 2015, to walk through the rental unit. Tenant M.T. said that B.M. wrote their forwarding address down on the landlord's note book; as the tenant was not offered an inspection report to sign. The tenant said that they have no proof that they gave the address on that date.

The landlord said his spouse would testify that she was present on July 31, 2015, and that tenant B.M. did not write down a forwarding address. Tenant M.T. said that her spouse did write down the address.

There was then a period of discussion between the parties and on September 24, 2015 tenant B.M. and the landlord met. At this point there is no dispute that the landlord received the written forwarding address. Within 15 days the landlord applied claiming against the deposits.

Analysis

I have not considered the merits of the landlords' application for dispute resolution or made any determination in relation to the move-out inspection reports required for the final fixed term tenancy.

From the evidence before me I find on the balance or probabilities that the landlord received the written forwarding address on September 24, 2015. The tenants have the burden of showing that they did give the address earlier than September 24, 2015 and have confirmed that they have no proof. The tenant did not have a witness present, to confirm service of the address. I found the landlord's testimony in relation to receipt of the address believable and, when combined with the tenants' acknowledgment that they

do not have proof of delivery of the address prior to September 24, 2015, I find that it was given on September 24, 2015.

As the landlord applied claiming against the deposits within 15 days for unpaid rent I find that the landlord did not breach the Act by retaining the security deposit. A claim for unpaid rent is not tied to condition inspection report completion.

I have then considered the retention of the pet deposit by the landlord. The landlord confirmed that a move-in condition inspection report was not scheduled. Section 23 of the Act requires a landlord to schedule an inspection at the start of the tenancy and that did not occur.

Residential Tenancy Branch policy #31, referencing pet deposits, provides:

*The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.*

(Emphasis added)

The tenants did not sign, agreeing to any deduction from the pet deposit at the end of the tenancy. The landlord did apply claiming against the pet deposit for damage caused by a pet; however, as the landlord failed to complete a move-in condition inspection report I find that the landlord extinguished the right to claim against the pet deposit. This decision is based on section 24(2) of the Act, which provides:

Section 24(2) of the Act provides:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38(1) of the Act requires a landlord to return the deposit within 15 days of receipt of the written forwarding address. As the landlord received the forwarding address on September 24, 2015 I find that the landlord had 15 days to return the pet deposit to the tenants. The pet deposit could not be retained as the landlord's right to claim against that deposit had been extinguished.

Therefore, Pursuant to section 38(5) and 38(6) of the Act, I find that the pet deposit must be doubled. As a result I find that the landlord is holding a pet deposit in the sum of \$1,050.00.

As the landlord is holding the security deposit and has not succeeded in a claim against that deposit I find that the tenants are entitled to return of the security deposit in the sum of \$575.00.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$1,775.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlords' application is dismissed with leave to reapply.

The tenants are entitled to return of double the pet deposit.

The tenants are entitled to return of the security deposit.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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: April 29, 2016

Residential Tenancy Branch