



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, FF

For the landlords – MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover double the security and pet deposit and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover double the security and pet deposits?
- Are the landlords entitled to a Monetary Order for damage to the unit or property?
- Are the landlords permitted to keep all or part of the security and pet deposits?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2013 and ended on September 30, 2015. Rent for this unit started at \$1,150.00 per month and was increased to \$1,175.00 per month after the first year. The tenants paid a security deposit of \$575.00 on April 11, 2013 and a pet deposit of \$575.00 on July 01, 2014.

The tenants testified that the landlords did not do a move in condition inspection of the unit with the tenants at the start of the tenancy. A condition inspection report was filled in by the tenants at that time and has been provided in documentary evidence. At the end of the tenancy the landlords did complete a move out inspection report. The tenants testified that they gave the landlord written notice to vacate the rental unit on August 29, 2015 and provided their forwarding address in that Notice.

The tenants testified that their dog did do some damage to a set of blinds in the unit. One blind was damaged and the other blind was barely damaged at all. The tenants did verbally offer the landlords the opportunity to keep their pet damage deposit for this damage to the blinds as the blinds were over 10 years old. The landlords refused this offer so the tenants rescinded it. The tenants testified that they did not agree in writing that the landlords could keep all or part of their security or pet deposit and therefore as the landlords have not returned the deposits within 15 days of the end of the tenancy the tenants seeks to recover double the security and pet deposit to an amount of \$2,300.00.

The landlords testified that the tenants obtained a dog even after the landlords asked the tenants not to. When the landlords found out the tenants had the dog they agreed the tenants could pay a pet damage deposit and the tenants signed an agreement stating that they would be responsible for any damage caused by the dog. The landlords testified that the tenants' dog caused damage to two of the landlords high end blinds in the unit. The landlords referred to their photographic evidence and a letter from the supplier of the blinds that confirms the blinds were purchased in 2005 and that they came with a life time warranty for any manufactures defects. The landlords also referred to the quote from the blinds supplier which states that to replace the two blinds the cost will be \$2,297.15. The landlords testified that they have now replaced the blinds and seek to recover the costs incurred

The landlords testified that the tenants' dog caused this damage yet the landlords had to pay for the damage and should not also have to be responsible to pay the tenants double the security and pet deposits as this would be unfair.

The parties did attempt to make a settlement concerning their claims; the tenants proposed that they still want the security and pet deposits doubled and then the landlords may keep \$575.00 towards the cost of the blinds as originally offered. The landlords proposed that they pay for one blind and the tenants pay for the other or the landlords will pay double the security deposit only and keep the pet deposit; however, a settlement agreement could not be reached.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants' application to recover double the security and pet deposits; I refer the parties to s. 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of one or all of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Furthermore, s. 23(4) of the *Act* requires a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in, I find the landlords contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(c) of the *Act* says that the landlords' right to claim against the security or pet deposit for damages is extinguished.

When a landlords' right to claim against the security and pet deposit has been extinguished the landlords must return the security and pet deposit to the tenants within 15 days of either the end of the tenancy or the date the tenants gives the landlords their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants' forwarding address in writing on August 29, 2015. As a result, the landlords had until September 13, 2015 to return all of the tenants' security and pet deposit. As the landlords failed to do so, the tenants have established a claim to have the security and pet deposit doubled to an amount of **\$2,300.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the landlords' claim to keep the security and pet deposits; as I have awarded the security and pet deposits to the tenants the landlords' application to retain these deposits is dismissed.

With regard to the landlords' claim for damage to the blinds; I have considered many factors when making this decision:

- The blinds were in good condition at the start of the tenancy and carried a lifetime warranty for any manufacturer's defects;
- The tenants got a dog without the landlords' permission knowing that dogs were not permitted and only obtained permission after the fact;
- The tenants signed an agreement on July 28, 2014 to be responsible for any damage caused by the dog;
- The tenants agreed that their dog did cause damage to at least one of the blinds; and

- The useful life of the blinds in accordance with #40 of the Residential Tenancy Policy Guidelines.

I refer the parties to #40 of the Policy Guidelines which states, in part, that:

Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

If the useful life of a building element is substantially different from what appears in the table, parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

The useful life of drapes and venation blinds is 10 years.

[My emphasis added]

I find that the evidence shows that the blinds were 11 years old and although they did have a lifetime warranty for any manufacturer defects this did not cover items such as any conditions caused by normal wear and tear, abuse, accidents or alteration, exposure to the elements and discoloration and fading over time; however, the tenants did sign an agreement with the landlords when they paid the pet damage deposit that agreed the tenants would be responsible for any damage caused by their pet and in light of the fact the tenants were fully aware that they were not to get a pet but did so without the landlords' prior permission and the tenants agreed that their dog did cause damage to at least one of these blinds; I find the landlords are entitled to some compensation for damage to the blinds. While I accept the blinds were at the end of their useful life in accordance with the Policy Guidelines I also accept from the evidence before me that the blinds were in a good condition at the start of the tenancy and therefore their useful life would be extended particularly in view of the manufacturers lifetime warranty to cover most mechanical parts.

Consequently, in light of the above, I find in partial favor of the landlords' claim for damage to the blinds and award the landlords the amount of **\$575.00** for damages. This amount will be deducted from the tenants' monetary award.

As both parties have been partially successful with their respective claims I find both parties must bear the cost of filing their own application. A Monetary Order has been issued to the tenants pursuant to s. 38(6)(b) and 67 of the *Act* as follows:

Double the security and pet deposit for the tenants	\$2,300.00
Less damages awarded to the landlords	(-\$575.00)
Total amount due to the tenants	\$1,775.00

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,775.00**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords are entitled to recover the amount of **\$575.00** from the tenants and this amount has been offset against the tenants' monetary award.

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: June 20, 2016

Residential Tenancy Branch