



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for; a monetary order for unpaid rent and damage to the unit pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; authorization to obtain the return of all or a portion of the tenants' security deposit pursuant to section 38; and authorization to recover their filing fee for this application from the landlords pursuant to section 72. On September 15, 2016, the tenant amended his application to seek a total amount of \$4330.00 from the landlord. The landlord acknowledged receipt of this amendment and agreed to proceed on the basis that the tenant sought an amended amount.

A representative of each party attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. Landlord AT represented both landlords and will hereafter be referred to as "the landlord". Tenant HZ represented both tenants and will hereafter be referred to as "the tenant".

The tenant testified that he served the landlords with a copy of the tenants' dispute resolution hearing package ("ADR package") by registered mail on August 26, 2016. The landlord confirmed receipt of the tenants' ADR package. The landlord also testified that he served the tenants with a copy of the landlords' dispute resolution hearing package by registered mail on September 27, 2016. The tenant confirmed receipt of the landlords' ADR package. Based on the sworn testimony of the parties, and pursuant to sections 88 and 89 of the Act, I find that each party has been sufficiently served with each other's' ADR packages including evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and damage to the unit?

Are the landlords entitled to retain all or a portion of the tenants' security deposit to satisfy any monetary order?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary order for compensation for damage or loss?

Are the tenants entitled to a return of all or a portion of their security deposit?

Are the tenants entitled to recover their filing fee for this application from the landlords?

Background and Evidence

This tenancy began on July 1, 2014 for a fixed term of one year. The rental amount of \$830.00 was payable on the first day of each month. Both parties agreed that on May 25, 2014, the tenant provided a security deposit of \$415.00.

The tenant testified that he and his co-tenant received a letter dated June 16, 2016 from the landlord requesting that the tenants move out. A copy of the letter was submitted as evidence. On July 27, 2016, a Residential Tenancy Branch adjudicator granted the landlord an Order of Possession of the rental unit and the tenant ultimately vacated the rental unit on August 9, 2016.

The landlord testified that the tenants did not vacate the rental unit after receiving the Order of Possession. The landlord provided undisputed testimony that the tenants stayed 8 additional days in the rental unit and that he ultimately required a court-appointed bailiff's services to vacate the tenants from the rental unit. The landlord provided a bill in the amount of \$1168.98 for bailiff's services. The landlord testified that, when the tenants vacated the rental unit, the unit was "stinky, oily and dirty" and required professional cleaners. The landlord sought \$5678.00 total for bailiff services, 8.5 days over holding by the tenants, cleaning services, a toilet repair as well as the replacement price of mattresses in the rental unit.

Item	Amount
Cost of Bailiff services	\$1168.98
Tenant 8.5 day stay/over holding	214.94
Mattresses ruined/disposed of	3200.00
Cost of Cleanup (14 hrs x 20.00)	280.00
Toilet repair	614.36

Cost of Filing Fee for Previous RTB hearing	100.00
Cost of Filing Fee for Current RTB hearing	100.00
Total Monetary Order Sought by Landlord	\$5678.28

The landlord testified that he had provided a mattress and some other furniture to the tenants at the outset of their tenancy. The landlord testified that, at the end of the tenancy, mattresses were ruined and he had to dispose of the mattresses. The tenant disputed the landlords' claim with respect to the mattress, stating that the mattress had been left behind by a previous tenant and was in the same condition that it had been in at the outset of this tenancy. The landlord did not provide a receipt, photographs or other evidence as proof of the damage to the mattress.

The tenant testified that, as a result of what the tenant described as a wrongful eviction by the landlord, the tenant incurred and sought to recover the following costs,

Item	Amount
Moving Costs of belongings from rental unit to storage	\$200.00
Storage costs	200.00
Moving Costs of belongings from storage unit to new rental unit	200.00
Plants damaged	300.00
Frozen food lost	300.00
Cost of temporary stay after eviction	540.00
2 months' rent for 'wrongful eviction'	1660.00
Return of security deposit	415.00
Monetary Award for Landlords' Failure to return security deposit as Act requires	415.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Tenant (amended amount)	\$4330.00

The tenant provided undisputed testimony and documentary evidence that the landlords were informed of the forwarding address by registered mail sent on August 26, 2016. The landlord testified that he had received the tenants' forwarding address and that he has not returned the tenants' security deposit as of the date of this hearing.

Analysis

With respect to the cross applications to retain or have returned the tenants' 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 a tenant's forwarding address in writing, to either return the security deposit in full 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 deposits, 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. In this case, the tenant provided undisputed testimony that the landlord was provided with the tenants' forwarding address by registered mail sent on August 26, 2016. The landlord had 15 days after August 31, 2016 (the deemed service date of the forwarding address information) to either file for Dispute Resolution or return the deposit. The landlord filed for dispute resolution on September 27, 2016 - which is not within 15 days of the receipt of the forwarding address. The landlord testified that he has not returned the tenants' security deposit as of the date of this hearing.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant testified that neither he nor his co-tenant agreed to allow the landlords to retain any portion of the security deposit. As there is no assertion by the landlord or documentary evidence that either tenant gave the landlords written authorization at the end of this tenancy to retain any portion of the security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants sought the return of their security deposit. While the landlords applied to the Residential Tenancy Branch to retain the tenants' deposits, they did so after 27 days had passed. I find there is sufficient proof that the landlords were provided with the tenants' forwarding address. I find that the tenants are entitled to a monetary order for the return of their security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would 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.*

Based on the evidence before me, I find that the landlords neither successfully applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenant gave sworn oral testimony that he and his co-tenant have not waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a total monetary order amounting to double the value of the \$415.00 security deposit with any interest calculated on the original amount only. No interest is payable for this period.

The other monetary amounts sought by the tenants are as a result of what they describe as a wrongful eviction. However, I note that an arbitrator of the Residential Tenancy Branch issued an Order of Possession to the landlord on July 27, 2016. Therefore, the end of tenancy was lawful and its execution complied with the terms of the *Act*. I dismiss the tenants' claim for; moving costs of belongings from rental unit to storage, storage costs, moving costs of belongings from storage unit to new rental unit as well as the cost of a temporary stay after eviction and the tenant's request for an award of 2 months' rent for 'wrongful eviction'. In the circumstances of this end to tenancy, the tenant is not entitled to recover these costs.

The tenant also claimed that his plants were damaged and his frozen food from the rental unit was lost as a result of the eviction. He testified that he did not have enough notice or time to ensure his frozen food remained frozen. He testified that his plants were damaged in the move. The tenants did not provide documentary evidence or photographic evidence to support those claims. As well, I find that the landlords do not

bear responsibility for the results of the tenants' relocation as the landlords evicted the tenants in a lawful manner. Therefore, I also dismiss the tenants' request for \$300.00 for damaged plants and \$300.00 for frozen food.

The landlords sought to recover the cost of bailiff services when the tenants failed to vacate the unit in accordance with the Order of Possession issued to them by the landlords. Therefore, the tenants are responsible for these additional costs that the landlords were forced to incur. It was the tenants' failure to vacate the rental unit in accordance with the Act that resulted in the bailiff's costs to the landlords. The landlords are entitled to recover \$1168.98 in bailiff services costs.

The landlord sought to recover the cost of the tenants' over holding of 8.5 additional days within the rental unit. The undisputed evidence from both parties is that the tenants remained in the rental unit until August 9, 2016 when the tenants were removed by the bailiff. Based on the evidence, I find that 8 (not 8.5) days of revenue were lost to the landlords and that they are therefore entitled to a pro-rated amount of the rent for those 8 days in the amount of \$214.00.

The landlords sought to recover the cost of cleaning the rental unit however the tenant disputed that the rental unit was left in poor condition. The landlord was unable to produce a condition inspection report from either the beginning or end of the tenancy. Both parties testified that condition inspection reports were not created. The landlords did not supply other documentary or photographic evidence of the condition of the unit at the end of tenancy.

Section 67 of the Act establishes that, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. In this case, the landlords 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 tenants. The landlords must then provide evidence that can verify the actual monetary amount of the loss or damage. The landlords failed to comply with the Act by failing to complete a condition inspection report. The landlord failed to provide sufficient evidence pursuant to section 67 to verify damage to the rental unit or a failure of the tenant to meet his cleaning obligations at the end of tenancy. As the landlords have not provided sufficient evidence with respect to his claim for cleaning, the landlord is not entitled to recover those costs claimed.

The landlord sought to recover \$614.36 for the repair of a toilet. The tenant disputed that he was responsible for a repair of the toilet and also stated that the toilet was in working order. The landlord provided no documentary to support his claim that the

tenant was responsible for damaging the toilet. I find that the landlord has not met the burden of proof with respect to toilet damage and I dismiss his claim with respect to toilet repair.

As stated, I find that the landlords are entitled to recover the cost of bailiff services as well as 8 days of over holding by the tenants while the tenants are entitled to recover their security deposit as well as a monetary award in the amount of the security deposit as the landlord failed to return the security deposit in accordance with the Act.

Item	Amount
LANDLORD: bailiff services required	1168.98
LANDLORD: 8 days' rent/over holding	214.00
<i>TENANT: Return of security deposit</i>	-415.00
<i>TENANT: Monetary Award for Failure to return security deposit as Act requires</i>	-415.00
Total Monetary Order	552.98

Given that each party was partially successful in their application, I find each party is responsible for the cost of their own filing fee paid for their application. With respect to the landlord's request to recover the filing fee from his previous hearing, this request should have been addressed at the previous hearing. I have no authority to address this past filing fee.

Conclusion

I issue a monetary Order in favour of the landlord in the amount of \$552.98.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with the Order, the Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: March 3, 2017

Residential Tenancy Branch

