



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC

Introduction

This hearing was scheduled to deal with the tenants' application for orders for the landlords to provide services or facilities required by law and to comply with the Act, regulations or tenancy agreement with respect to a sewer back up. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I determined that the tenants had originally submitted their Application for Dispute Resolution, including payment, at a Service BC office on April 18, 2018 and while they were still in occupation of the rental unit. An error was made in processing the paperwork and the Residential Tenancy Branch rectified the error by processing this Application for Dispute Resolution on May 10, 2018; however, the tenants had already vacated the rental unit by that date. Nevertheless, the tenants proceeded to serve the landlords with their Application for Dispute Resolution by posting and other required documents on the landlords' door on May 13, 2018. The landlords received the Application for Dispute Resolution and related documents two days later.

The landlords provided a written response and evidence and sent the documents to the tenants via registered mail on June 28, 2018. A search of the tracking number showed that a notice card had been left for the tenants in their post office box but the registered mail had not yet been picked up as of the date of the hearing. Considering the hearing was scheduled for July 5, 2018 I found the landlord's submissions were served late since there was insufficient mailing time allowed. The landlords explained that the delay in serving their response was attributable to being out of town dealing with a significant medical issue.

I then determined that the tenants vacated the rental unit on April 30, 2018 and I informed the parties that it would appear the remedies sought by the tenants are moot since the tenancy has ended.

The tenants stated that they want an order for the landlords to return their security deposit. I note that when the tenants filed their Application for Dispute Resolution they included a statement that the landlords would not release them from the tenancy agreement or return the security deposit. However, seeking return of a security deposit before a tenancy has ended is premature. It is also premature to seek its return less than 15 days after the tenancy ended or providing a written forwarding address has lapsed.

The landlords indicated that they intend to retain the security deposit but acknowledged they have not yet made a claim against it. The landlords stated they did not obtain a forwarding address until receiving the tenant's Application for Dispute Resolution and the landlord's believed the security deposit would be addressed during this proceeding.

The tenants stated they provided their forwarding address on the move-out inspection report that was prepared with the landlord's real estate agent on the landlords' behalf on April 30, 2018. The tenants pointed out that they had not yet received a copy of the move-out inspection report. The tenants confirmed that the forwarding address provided on the move-out inspection report is the same service address that appears on their Application for Dispute Resolution and the service address is still current.

The landlords acknowledged that their real estate agent had performed the move-out inspection on the landlords' behalf and the real estate agent had provided the landlords with a copy of the inspection report by email but the landlords could not locate the document in preparing for this hearing or during the hearing. In the absence of a copy of the move out inspecting report I could not verify whether a written forwarding address was provided by the tenants at the time of the move-out inspection.

Discussion ensued with respect the landlords' obligation to give the tenants a copy of the move-out inspection report within 15 days of the tenancy ended or receiving the tenant's written forwarding address; as well as the landlords' obligation to administer the security deposit in accordance with section 38 of the Act.

In light of the above, I found the tenants' request for return of the security deposit was premature at the time of filing and their request is dismissed with leave to reapply. If the

landlords fail to administer the security deposit in accordance with section 38 of the Act the tenants may re-apply and may seek doubling of the deposit as appropriate.

I further order the landlords to obtain and send a copy of the move-out inspection report to the tenants at their service address without delay.

I further order the landlords to comply with section 38 of the Act with respect to administering the security deposit. Below, I have reproduced section 38 of the Act for the parties' reference.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3)A landlord may retain from a security deposit or a pet damage deposit an amount that

(a)the director has previously ordered the tenant to pay to the landlord, and

(b)at the end of the tenancy remains unpaid.

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a)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, or

(b)after the end of the tenancy, the director orders that the landlord may retain the amount.

(5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6)If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7)If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8)For the purposes of subsection (1) (c), the landlord must repay a deposit

(a)in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b)by giving the deposit personally to the tenant, or

(c)by using any form of electronic

(i)payment to the tenant, or

(ii)transfer of funds to the tenant.

[My emphasis in bold]

Conclusion

The tenants' request for orders for services and facilities and other orders concerning a sewer back-up are moot since the tenancy has ended.

The tenants' request for return of the security deposit was made prematurely and is dismissed with leave to reapply.

I have ordered the landlords to send the tenants a copy of the move-out inspection report at their service address without delay.

I have ordered the landlords to comply with section 38 of the Act with respect to administering the security deposit.

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: July 06, 2018

Residential Tenancy Branch