



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 15, 2018 (the "Application"). The Tenants applied for the return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing for all Tenants. The Caretaker and Property Manager appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

At the outset of the hearing, all parties agreed the Landlord's name should be amended on the Application and this amendment is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised by the parties in this regard.

All parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenants regarding the rental unit. The tenancy started May 1, 2017 and was a month-to-month tenancy. Rent was \$3,700.00 per month. The Tenants paid a \$1,850.00

security deposit. The Tenants moved out of the rental unit April 30, 2018. The Landlord still has the entire security deposit.

The Tenant testified that the Tenants provided their forwarding address to the Landlord by email May 4, 2018. The Tenants submitted a copy of this email which was to the Caretaker. The Tenant said the Tenants also provided their forwarding address in written form which was dropped off in the Caretaker's mailbox.

The Caretaker provided testimony regarding the forwarding address of the Tenants that was unclear. I understood the Caretaker to say he received the forwarding address for the first time in the May 4th email. The Landlord's representatives did not take issue with the form in which the forwarding address was provided.

Both parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The Tenant testified that a move-in inspection was not done.

The Landlord's representatives testified as follows. A move-in inspection was done with Tenant J.H. on May 1, 2017. The unit was empty at the time. A Condition Inspection Report was completed. Both the Caretaker and Tenant J.H. signed the report. A copy of the report was provided to Tenant J.H. personally the day of the inspection.

The Tenant testified that a move-out inspection was not done.

The Landlord's representatives testified as follows. The Caretaker did a move-out inspection. The Tenants did not participate because they first asked for an extension and then left without completing the inspection. The unit still had garbage in it. A Condition Inspection Report was completed and the Caretaker signed it. A copy of the report was not provided to the Tenants because they just left.

The Tenant said the Tenants were not provided with two opportunities to do the move-out inspection. The Landlord's representatives said the Tenants were provided two opportunities over the phone.

Analysis

The following was not in issue. The Tenants paid a \$1,850.00 security deposit. The Tenants provided their forwarding address in writing to the Landlord May 4, 2018. The Landlord still has the entire security deposit. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the

tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

I accept the testimony of the Landlord's representatives regarding the move-in inspection. Based on this, I find neither party extinguished their rights in relation to the security deposit under section 24 of the *Act*.

Based on the testimony of the Landlord's representatives, I find the Landlord did not provide the Tenants with two opportunities to do a move-out inspection in accordance with section 35(2) of the *Act*. Therefore, I find the Tenants did not extinguish their rights in relation to the security deposit under section 36(1) of the *Act*.

Based on the testimony of the Landlord's representatives, I find the Landlord did extinguish their rights in relation to the security deposit under section 36(2)(a) of the *Act* as the Tenants were not provided with two opportunities to do the move-out inspection in accordance with section 35(2) of the *Act*. Further, the Landlord did not provide a copy of the Condition Inspection Report to the Tenants in accordance with section 36(2)(c) of the *Act*.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the Tenants' forwarding address in writing on May 4, 2018 to repay the security deposit with interest or apply for dispute resolution claiming against the security deposit. I find the Landlord was in fact not entitled to keep the security deposit and apply for dispute resolution claiming against it given the Landlord had extinguished their rights in relation to the security deposit under section 36 of the *Act*.

Even if the Landlord had not extinguished their rights in relation to the security deposit, the Landlord did not repay the deposit or apply for dispute resolution to claim against it and therefore failed to comply with section 38(1) of the *Act*. Based on the testimony of the parties, I find that none of the exceptions in section 38 of the *Act* applied.

Given the Landlord did not comply with section 38(1) of the *Act*, pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and would have been required to pay the Tenants double the amount of the security deposit. However, the Tenant waived the Tenants' right to double the security deposit and therefore the Landlord is only required to return the original amount of \$1,850.00. I note that there is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

I note that the condition of the rental unit upon move-out is irrelevant to this application. The Landlord extinguished their right to claim against the security deposit by failing to comply with the condition inspection requirements in the *Act*. Further, even if the Landlord had not extinguished their rights in relation to the security deposit, they were required to apply for

dispute resolution in order to keep the security deposit. The Landlord was not entitled to simply keep the deposit because they felt the unit was left damaged or unclean.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the above, I find the Tenants are entitled to a Monetary Order in the amount of \$1,950.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,950.00 being \$1,850.00 for the security deposit and \$100.00 for the filing fee.

I grant the Tenants a Monetary Order in the amount of \$1,950.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 27, 2018

Residential Tenancy Branch