Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of the balance of their security and pet damage deposit (collectively, the "**Deposits**") in the amount of $727.50 security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord and tenant SL attended the hearing. Tenant SL testified that she had authority to act on behalf of tenant TM. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties agreed that each had received the evidence of the other in advance of the hearing. The landlord agreed that she had received the notice of dispute resolution form from the tenants.

Issue(s) to be Decided

Are the tenants entitled to:

- the return of the balance of the Deposits; and
- recover their filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2017. Monthly rent was $1,200.00 and was payable on the last day of each month. The tenants paid the landlord a security deposit of $600.00 and a pet damage deposit of $300.00. The landlord retains $727.50 of the Deposits.

Tenant SL testified, and the landlord agreed, that, at the start of the tenancy, the landlord did not provide the tenants with a written copy of the move-in condition inspection report (although a walkthrough was done).

The tenancy ended on November 30, 2018. Tenant SL testified, and the landlord agreed, that she provided the tenants' forwarding address to the landlord on December 10, 2018

The landlord testified that, when the tenants moved out, the rental unit was left in a state unsuitable for re-renting. The landlord testified that she incurred damages associated with bringing the condition of the rental unit to a level suitable for re-renting as follows:

Cleaning/Garbage/Drain Treatment	$300.00
Return of rent to new tenant/truck rental	$175.00
Repairs	$100.00
Total	**$575.00**

The landlord testified that the new tenant she procured was unable to move in as planned due to the condition of the rental unit, and she had to incur the cost of keeping her moving truck for an additional day.

The landlord testified that the closet door in the rental unit was broken, and needed repairs.

The landlord did not upload any receipts to corroborate the amounts she claims.

Tenant SL testified that the condition of the rental unit was not as described by the landlord. She denied that it required cleaning that would have prevented a new tenant from moving in. She did admit the hinges on the closet door were broken.

The landlord testified that, on December 11, 2018, she e-transferred each tenant $172.50 ($350.00 total), which she said represented the balance of the Deposits the tenants were entitled to, based on her calculations (see above).

Tenant SL accepted the e-transfer, but tenant TM did not. The landlord has since cancelled the e-transfer to tenant TM.

The landlord testified that she did not apply for dispute resolution at the Residential Tenancy Branch claiming against the security deposit. She testified that she did not know that this was a requirement.

Analysis

While much of the hearing time was taken up by the extent of the condition of the rental property, it is not necessary for me to make any determinations as to its actual condition for the purposes of this application.

Section 38(1) of the Act states:

> **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.

Based on the testimony of the parties, I find that the tenancy ended on November 30, 2018, and that the tenants provided their forwarding address in writing to the landlords on December 10, 2018.

I find that the landlord did not return the security deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I find that the landlord did not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlord to allege the tenants breached the tenancy agreement or the Act by failing to properly clean the rental unit at the end of the tenancy. The landlord must apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address, unless she had the tenants permission to keep part of the security deposit (which, in this case, she did not).

The landlord did not do this. Accordingly, I find that she have failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (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.

The language of section 38(6)(b) is mandatory. As the landlords have failed to comply with section 38(1), I must order that they pay the tenant double the amount of the Deposits.

Policy Guideline 17 sets out how this doubling is to be calculated in the event a portion of a deposit has been repaid:

> 5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
> - Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy

Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

As such, I order that the landlord pay the tenants $1,627.50, calculated as follows:

Amount of Deposits	$900.00
	x2
Subtotal	$1,800.00
Amount repaid	-$172.50
Total	**$1,627.50**

As the tenants have been successful in their application, they are entitled to have their filing fee of $100.00 repaid by the landlords.

Additionally, I note that the landlord failed to provide a written copy of the move-in condition inspection report to the tenants at the start of the tenancy. Section 24(2) of the Act states:

> **Consequences for tenant and landlord if report requirements not met**
> (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.

While this does not have any bearing on my current decision, as I have found the landlord has breached section 38(1) of the Act, I mention this to advise the landlord of her obligations under the Act, as I understand she continues to rent out the rental unit.

Conclusion

Pursuant to section 38, 67, and 72 of the Act, I order that the landlord pay the tenants $1,727.50, represent the return of double the damage deposit (less the amount already returned), and the filing fee.

If the landlord does not comply with this order, the order may be filed and enforced in 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 26, 2019

Residential Tenancy Branch