



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD REALTY KELOWNA
BC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

On December 18, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit and pet damage deposit; and to recover the cost of the filing fee.

On December 21, 2019, the Tenants submitted an Application for Dispute Resolution under the *Act* for the return of a security deposit and or pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference. The Landlord was assisted by the Landlord’s agent.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary and Procedural Matters

The objective of the Residential Tenancy Branch Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

Rule 3.1 of the Rules of Procedure provides that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- 1) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- 2) the Respondent Instructions for Dispute Resolution;
- 3) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- 4) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5; copies of all other documentary and digital evidence to be relied on in the proceeding.

Rule 3.17 of the Rules of Procedure provides that evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Landlord applied for dispute resolution on December 18, 2019. A review of the case management system indicates no documentary evidence to support the application was submitted at that time. The case management system indicates the Landlord provided their documentary evidence on May 19, 2020 and May 21, 2020 which is less than one week prior to the hearing.

The Landlords agent testified that she served a copy of the Landlords' documentary evidence to the Tenants using emails sent to them on May 19, 2020.

The Tenants testified that the Landlord did not serve them with the evidence in accordance with the Rules of Procedure. In addition, the Tenants testified that on May 19, 2020 they only received some of the Landlord's evidence. The Tenants testified that they were served six days prior to the hearing and they have not had an opportunity to consider and respond to the Landlord's evidence. The Tenants testified that the Landlord should have served the evidence a full 14 days prior to the hearing. The

Tenants testified that the Landlords agent is a professional agent who should be aware of the rules. The Tenants testified that they have been waiting for the return of their security deposit since November 2019 and they were not in agreement that the hearing could be adjourned so that they would have more time to consider and respond to the Landlords evidence.

I find that the Landlord failed to serve their documentary evidence to the Tenants in accordance with the Rules of Procedure. I find that the Notice of Dispute Resolution proceeding contains specific information that the Rules of Procedure will apply to the proceeding. I find that to accept and consider the Landlords evidence that I have before me would be unfair to the Tenants and would result in a breach of the principles of natural justice. Furthermore, it is unclear whether or not the Landlord served the Tenants with all the evidence that was provided to the Residential Tenancy Branch.

The Landlord was informed that their documentary evidence is not accepted and will not be considered.

The Landlord then withdrew her application for dispute resolution. Accordingly, the Landlords application is dismissed without leave to reapply.

The hearing proceeded on the Tenants application for the return of a security deposit and or pet damage deposit; and to recover the cost of the filing fee.

Issues to be Decided

- Are the Tenants entitled to the return of the security deposit and pet damage deposit?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on February 15, 2019 as a nine-month fixed term tenancy. Rent in the amount of \$2,000.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00. The parties testified that the tenancy ended on November 30, 2019.

The Tenants testified that the Landlords did not return any amount of the security deposit or pet damage deposit to them after the tenancy ended.

The Tenants testified that there was no written agreement between the parties that permitted the Landlords to retain any amount of the security deposit or pet damage deposit.

The Tenants testified that they provided the Landlord with their forwarding address in writing on December 3, 2019. The Tenants testified that their address was provided as a document attached to an email. The Tenants provided a copy of the document provided to the Landlord.

In reply, the Landlord provided testimony confirming that the Landlord received the Tenants forwarding address on December 3, 2019.

The Landlord's agent submitted that they applied against the security deposit and pet damage deposit on December 18, 2019.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenants provided their forwarding address to the Landlords on December 3, 2019. I find that the Landlord applied against the security deposit and pet damage deposit on December 18, 2019.

I find that the Landlord applied for dispute resolution within 15 days of receiving the Tenants forwarding address.

I order the Landlord to repay the Tenants the amount of \$1,000.00 for the security deposit and \$1,000.00 for the pet damage deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$2,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement is recoverable from the Landlord.

Conclusion

The Landlord withdrew their application at the start of the hearing. The hearing proceeded on the Tenants' application.

The Landlords applied to keep the security deposit and pet damage deposit within 15 days of receiving the Tenants forwarding address. The Landlords application was withdrawn and dismissed at the hearing.

The Tenants are granted the return of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$2,100.00.

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: May 26, 2020

Residential Tenancy Branch