Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Preliminary Matters

This hearing was convened on August 31, 2020, in response to the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of his security deposit and pet damage deposit; and
- recovery of the filing fee.

The tenant and the landlord attended the original hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

I determined at the original hearing that an adjournment was necessary in order to allow the tenant to re-serve his evidence to the landlord.

An Interim Decision was entered in this matter on September 1, 2020, with instructions and orders for the parties. The Interim Decision should be read in conjunction with this Decision and is incorporated by reference herein.

The tenant, the landlord and his legal counsel attended the final hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the considerable amount of oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules).

However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a return of his security deposit and pet damage deposit?

Is the tenant entitled to recovery of the filing fee paid for his application?

Background and Evidence

The tenant submitted a written tenancy agreement showing a tenancy start date of January 1, 2020, a fixed term through April 4, 2020, monthly rent of $4,995, due on the 1st day of the month, and a security deposit of $2,497.50 and a pet damage deposit of $2,497.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

Other evidence indicated that the tenant did not move into the rental unit January 14, 2020 and that he vacated on March 16, 2020.

The tenant gave evidence that he provided the landlord his written forwarding address by certified mail sent on March 24, 2020.

The landlord confirmed he received the tenant's written forwarding address towards the end of March 2020.

The tenant submitted that the landlord has not returned his security deposit or pet damage deposit, which caused the application to be filed on April 27, 2020.

The landlord confirmed that the security deposit and pet damage deposit have not been returned.

The tenant is now requesting the return of his security deposit and pet damage deposit.

Landlord's response –

The landlord submitted that he did not return the two deposits as the tenant agreed the landlord could keep the deposits, as shown on the condition inspection report (CIR) filed into evidence by the landlord.

Tenant's additional submissions –

The tenant denied signing the part of the move-out CIR agreeing the landlord could keep his security deposit and pet damage deposit.

The tenant said that the tenancy came to a quick and early end due to the COVID-19 pandemic, which began to take full effect about that time, March 16, 2020. The tenant said that the move-out inspection consisted of a 45 minute argument, during which time the landlord told the tenant that they better leave so they could still get across the Canada-USA border, as it was closing. The tenant explained he lives in the USA, and was in the area for work purposes.

The tenant said during the rush to leave the rental unit as quickly as possible, the landlord did not give him a copy of the CIR, so his mother suggested that he take a picture. The tenant said he took the photo of the CIR at 11:50 a.m. and then left. The tenant said that the landlord began texting him by 12:00 noon, thanking him for forfeiting his two deposits. The tenant again denied signing the documents, but questioned the landlord's motive in sending him text messages within 10 minutes of leaving.

The tenant said that the landlord has never provided him with the signed CIR and only saw the document in question when looking at the landlord's evidence.

The tenant said the document sent in by the landlord shows his signature was forged. The tenant spoke to the landlord's audio recording, and questioned why the landlord only supplied a very short clip of less than two minutes of the 45 minute argument when they were trying to have the move-out inspection. The tenant was not told the landlord was recording him that day.

The tenant said that since this issue has come up, a mutual friend put him in touch with another friend, "SM", who happens to have been a tenant of the landlord. That tenant, according to the tenant here, suggested that this landlord alleged damages and then pressured her to sign away her rights to the security deposit and pet damage deposit.

The tenant submitted that that landlord has altered the recording and shows entrapment, as the landlord only spoke about eight matters.

The tenant said that when they started the move-out inspection, he went straight over to the oven and stove and looked to the scratches, showing that he had already illegally entered the rental unit, without permission or notice, and did not and has not, provided the quotes. The tenant questioned how the landlord already had quotes available at the move-out inspection.

The tenant's relevant evidence included, but was not limited to:

- The CIR;
- photographs of items in question taken at the move-out inspection;
- a video of the rental unit at the time of the move-in;
- a letter from the former tenant, SM, who shares a mutual friend with the tenant;
- an email from the landlord to SM, dated April 28, 2020; and
- text messages between the parties.

Landlord's additional submissions –

The landlord said that while filling out the reports, the tenant took photographs of the CIR. The landlord said the photograph of the CIR the tenant submitted was made prior to the completion of the report being filled out.

The landlord said that the tenant took the original CIR, so he took a photograph of the completed document.

The landlord said that his audio evidence shows that the tenant's mother asked if they could settle the damage claim for $5,000, which shows the tenant acknowledged the damage and agreed to the landlord keeping the security deposit and pet damage deposit. The landlord confirmed that the tenant did not know he was being recorded.

The landlord said that he did not return the tenant's security deposit and pet damage deposit because the tenant agreed to forfeit the two deposits, as shown on the CIR.

The landlord's relevant evidence included, but was not limited to:

- a photograph of the CIR;
- a clip of the audio recording taken at the move-out inspection;

- photographs of the bedroom at the beginning and end of the tenancy;
- photographs of alleged damage to the cabinet, counter, door, kitchen cabinet, table, side kitchen and patio.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy.

Section 38(4) of the Act allows a landlord to retain an amount from a security deposit or pet damage deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

Tenancy Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the security deposit, either on an application for the return of the security deposit or at the hearing, the arbitrator will order the return of double the security deposit and pet damage deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on March 16, 2020, when the tenant vacated the rental unit and that the landlord received the tenant's forwarding address by certified mail, by the end of March 2020.

What is in dispute here is whether the tenant agreed in writing that the landlord could retain the security deposit and pet damage deposit for a liability or obligation.

The parties provided different versions of the move-in and move-out condition inspection report. In support of their respective positions, I found the parties' testimony plausible and at opposite extremes.

I therefore find it necessary to examine the evidence, including the discrepancies, and assess the credibility of the respective parties.

To do so, I find guidance in *R. v. Parent*, 2000 BCPC 11 at para 5. Provincial Court Judge Rounthwaite states courts have recognized a number of factors as helpful. These include:

1. *The witness' ability to observe the events, record them in memory, recall and describe them accurately,*
2. *The external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?*
3. *Its internal consistency. Does the witness' evidence change during direct examination or cross-examination?*
4. *The existence of prior inconsistent statements or previous occasions on which the witness has been untruthful.*
5. *The "sense" of the evidence. When weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?*
6. *Motives to lie or mislead the court: bias, prejudice, or advantage. To consider the obvious possible motive of every accused person to avoid conviction would place an accused at an unfair disadvantage. As a result, I do not consider that possible motive when assessing an accused's testimony.*
7. *The attitude and demeanour of the witness. Are they evasive or forthcoming, belligerent, co-operative, defensive or neutral?*

[Reproduced as written]

In examining the respective CIRs the parties submitted, I note that the first two pages are the same.

On the first page of the CIR, the landlord has listed the possession date as "01 01 20" and the move-in and move-out inspection dates were the same, "14 01 20".

At the bottom of each page, the tenant's and the landlord's initials appear.

The difference in the two documents are located on the third page.

On the 3rd page of the landlord's copy of the CIR, which is on the Residential Tenancy Branch (RTB) provided form, the space marked for "END OF TENANCY", "Z." "Damage to rental unit or residential property for which the tenant is responsible, there is a list of

building elements, such as “counter kitchen, cabinets kitchen, fridge panel”. I was unable to read the other building elements, with the exception of the word “scratches”.

That section on the tenant’s copy of the CIR is blank.

Under section 1 of the END OF TENANCY portion on the landlord’s copy, the tenant’s name is written and on the tenant’s copy, the tenant’s name is left off.

Under section 2 of the END OF TENANCY of the landlord’s copy of the CIR, the security deposit of $2497.50 and the pet damage deposit of $2497.50 are listed separately, as is the date of “03/16/2020”. This also appears on the tenant’s copy of the CIR.

By the date for “Signature of Tenant”, the same marking made by the tenant at the bottom of all three pages of the CIR is on this line. On the tenant’s copy of the CIR, the line is blank.

This section of the CIR is for the instance of when a tenant agrees “to the following deductions from my security deposit and/or pet damage deposit”.

The landlord has argued that his copy confirms that the tenant agreed the landlord could keep both deposits and the tenant argued that his copy confirms that he did not sign the document.

In the case before me, after a review and consideration of all the relevant evidence, I favoured the evidence of the tenant over the landlord. I make this determination considering:

The landlord has mentioned in evidence that the tenant caused excessive damage to the rental unit in the two months of the tenancy, in the amount of up to $30,000. The landlord mentioned various amounts, $10,000, $15,000, $20,000 and $30,000. It does not make sense to me that the landlord would be willing to settle for $5,000 when he claims damage caused by the tenant up to $30,000.

I reviewed the landlord’s photographs said to be taken at the end of the tenancy and cannot reasonably conclude the tenant caused the alleged damage, as I did not see a like, extremely up-close photograph of the building elements at the beginning of the tenancy. I find that the areas of concern as depicted in the landlord’s photographs did

not show damage nearly to that extent claimed by landlord. For instance, there was a faint scratch in the side of the cabinet and a small, very faint scratch on the table.

The tenant submitted photographs of some of the same building elements and the claimed damage looked less than as shown in the landlord's photographs.

I was also persuaded by what the landlord did not say, which was how much he actually spent on repairing the "significant" amount of damage. The landlord had from March 16, 2020 until the hearing to make the repairs and submit receipts.

Since the landlord believed it supported his position to show the tenant caused extensive damage by supplying photographs, I question why the landlord would not also supply receipts showing repairs for the damage. While this is not the landlord's application, I find he would have had more credibility had he shown proof of a loss at least in the amount equal to the security deposit and pet damage deposit, since his assertion was that the tenant committed damage up to $30,000.

I then turn to the audio clip supplied by the landlord. Although I heard evidence the walk-through was 45 minutes, the audio clip was 1:22 minutes. The audio clip abruptly stopped after the words by the landlord "so here, security deposit…" without finishing the sentence.

It led me to conclude the audio clip was self-serving for the reason the landlord did not supply the full audio clip, only the short portion where the tenant's mother offered to settle for $5,000. I therefore was unable to determine the context of the discussion either prior to or after the tenant's mother's offer to settle for $5,000.

I find it reasonable to conclude the entire audio clip would provide context to what led up to the tenant's mother's query as to whether they could settle for $5,000, as the audio clip I was provided abruptly stopped at that point.

The landlord, in the audio clip, provided specific quotes for the countertop chip repairs, which led me to question how the landlord would know the specific prices, at the final walk through if this was the first time he was seeing them. This caused me to further doubt the credibility of the landlord's evidence.

I then turned to SM's letter, the tenant of the landlord prior to this tenant's tenancy. I considered this documentary evidence, as I find it necessary and appropriate and relevant to the dispute resolution proceeding.

SM wrote she is in the area every year working and looks for short-term, furnished rentals. In this case, SM wrote that she found the landlord through a rental company.

SM described many issues with the landlord during the tenancy, but in particular, she spoke to the end of their tenancy on the "final walk through". SM wrote that the landlord told the tenant that they owed him over $10,000 in damages caused in that six-month tenancy, because of the mattress.

The tenant supplied a copy of the email sent by the landlord to SM, and included in that email, the landlord told SM "in good faith and our friendship", he would allow the tenant one opportunity to retract or revise her "inaccurate account/letter" within 48 hours. I have no evidence that SM retracted her statement or that the landlord took action after 48 hours, or at all.

The landlord also described in the email that SM agreed to forfeit their security deposit and pet damage deposit due to the large amount of damage caused by SM, her fiancé and small dog.

When weighed with common sense, it does not make sense to me that the landlord claimed damages of $10,000 from his previous tenant, in a six-month tenancy, and agreed to settle for SM's security deposit and pet damage deposit instead.

In the present case, three to four months after the last tenancy ended, the landlord told this tenant that the damage he allegedly caused in the two-month tenancy was up to $30,000. When weighed with common sense, it does not make sense to me that the landlord would settle for $5,000 if he believed the damage was truly $30,000. Rather than seek the actual cost of damage, the landlord again said he agreed to settle for the security deposit and pet damage deposit. I find these two scenarios indicate a pattern from this landlord.

Also, I find the landlord's evidence is inconsistent when compared with his claim of extensive damage to the photographs he submitted.

For these reasons, I find the landlord's evidence not credible.

Lastly, I turn to the requirements of the parties as to the condition inspection report.

Section 35(3) of the Act requires the landlord to complete a condition inspection report in accordance with the regulations

Section 35(4) of the Act requires that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report, in accordance with the regulations.

Under section 18 of the Residential Tenancy Regulations (Regulations), a landlord must give the tenant a copy of the signed condition inspection report.

Section 20 of the Regulations provides the standard information that must be included in a condition inspection report. Among other requirements, the report must include :

> *(k)the following statement, to be completed by the tenant:*
>
> *I, ...*
>
> *Tenant's name*
>
> *[ ] agree that this report fairly represents the condition of the rental unit.*
>
> *[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*
>
> *.....*
>
> *.....;*
>
> *(l)a space for the signature of both the landlord and tenant.*

Section 20(2) of the Regulations must include the following:

In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

> *(a)a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;*
>
> *(b)if agreed upon by the landlord and tenant,*
>
> *(i)the amount to be deducted from the tenant's security deposit or pet damage deposit,*
>
> *(ii)the tenant's signature indicating agreement with the deduction, and*
>
> *(iii)the date on which the tenant signed.*

In this case, I find the condition inspection report to be deficient and therefore, invalid.

I have reviewed the written tenancy agreement and addendum, which included the tenant's signature twice.

In comparing the tenant's signature to the marks on the signature line of the condition inspection report, the tenant's signature on the tenancy agreement and addendum is very distinct from the inspection report. The line for the tenant's signature agreeing to the following deductions, the space where the full security deposit and pet damage deposit are listed, shows the tenant's initials, not his signature as reproduced on the written tenancy agreement. The initials on the signature line closely replicates the initials at the bottom of pages 2 and 3 of the inspection report, which I find indicates that the parties read the page only.

For this reason, I **find** the tenant **did not sign** the condition inspection report agreeing to any deductions, and as a result, I find the landlord did not have the tenant's written authority to keep the tenant's security deposit and pet damage deposit.

As well, I find the landlord failed to comply with the Act and the Regulations as he confirmed he did not provide a completed copy of the condition inspection. The tenant denied receiving the original.

Due to the above, I find the landlord was obligated to repay the tenant's security deposit and pet damage deposit or make an application for dispute resolution claiming against the deposits by at least April 15, 2020, due to his confirmation he had the tenant's written forwarding address by the end of March 2020. In contravention of the Act, the landlord retained the security deposit and pet damage deposit, without filing an application.

I therefore order the landlord return the tenant's security deposit of $2,497.50 and pet damage deposit of $2,497.50. I also find that by operation of section 38(6) of the Act, the security deposit and pet damage deposit must be doubled, as the tenant did not specifically waive his rights to the doubling part of the Act either in his application or at the hearing.

Due to his successful application, I grant the tenant recovery of his filing fee of $100.

I therefore find the tenant has established a total monetary claim of $10,090.00, comprised of his security deposit of $2,497.50, doubled to $4,995.00, his pet damage

deposit of $2,497.50, doubled to $4,995.00 and the filing fee paid for this application of $100.

I grant the tenant a monetary order in the amount of $10,090.00 and it is included with this Decision.

Should the landlord fail to comply with this order without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is granted as he is awarded a monetary order in the amount of $10,090.00 as noted above.

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: October 27, 2020

Residential Tenancy Branch