



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of their security deposit and pet damage deposit;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

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

The parties did not raise any issue with regard to the service of the tenant's application and the other's evidence.

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

I have reviewed all 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

Are the tenants entitled to a monetary order for the amount of their security deposit and pet damage deposit, doubled, and to recovery of their filing fee?

Background and Evidence

A written tenancy agreement was filed into evidence showing a month-to-month tenancy start date of October 1, 2018, monthly rent of \$1,600, due on the 1st day of the month, and a security deposit of \$800 and a pet damage deposit of \$100 being paid by the tenants to the landlords. The written tenancy agreement indicates different landlords at the beginning of the tenancy.

The landlord here took ownership of the residential property in May 2020.

Although neither party referred to a previous dispute resolution between the parties, a note to the Residential Tenancy Branch (RTB) dispute management system on this particular file indicated that the landlord had made an earlier application.

I reviewed that earlier application, which showed that the landlord filed an application for dispute resolution on July 15, 2020, claiming for damages, monetary compensation and permission to retain the tenants' security deposit and pet damage deposit.

In a Decision on November 6, 2020, another arbitrator dismissed the landlord's application, with leave to reapply, due to insufficient particulars in the application. In particular, the landlord testified that he had not included a detailed calculation or the monetary claim against the tenants, although he included receipts.

The tenants submitted at that hearing they were unclear of the details of the claim being made against them.

In this case, the evidence showed that the landlord has kept the tenants' security deposit and pet damage deposit. Further, the undisputed evidence is that the tenancy ended on June 30, 2020.

Tenants' submissions –

The tenants submitted that they provided the landlord with their written forwarding address in an email on June 30, 2020, and by letter sent by XpressPost mail on July 16, 2020. The tenants submitted evidence that the mail was delivered on July 22, 2020.

The tenants said that there was no move-out inspection with the landlord and there was not a move-out condition inspection report (CIR).

For this reason, the tenants are requesting that their security deposit and pet damage deposit be returned, and that these amounts should be doubled, as the landlord has extinguished his rights to the deposits.

Filed into evidence was a copy of the email and letter containing the tenants' forwarding address, the move-in inspection report, video of a final walk-through, and delivery confirmation of the XpressPost mail.

Landlord's submissions –

The landlord confirmed the tenancy ended on June 30, 2020, and that he received the tenants' forwarding address, both in the email and the mailed letter.

The landlord confirmed that he received a move-in CIR from the original landlords/owners and that there was not a move-out inspection of the rental unit with the tenants.

The landlord confirmed he still retains the tenants' security deposit and pet damage deposit.

The landlord inquired if he could still make a claim against the tenants.

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, at the end of a tenancy, unless the tenant's right to a return of their security deposit and pet damage deposit has been extinguished, a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, the tenancy ended on June 30, 2020, and the landlord filed an earlier application claiming against the tenants' security deposit and pet damage deposit, on July 15, 2020. Under section 36(2) of the Act, however, a landlord's right to claim against the security deposit and pet damage deposit are extinguished if they do not arrange for and conduct a move-out inspection and complete the inspection report.

I interpret this part of the Act to mean that the landlord here forfeited his right to claim against the security deposit and pet damage deposit.

Additionally, Residential Tenancy Policy Guideline 17 C. 3 states that on a tenant's application for a return of the security deposit and pet damage deposit, the arbitrator will order the return of double the deposits if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to claim has been extinguished.

I note that also under Policy Guideline 17, the landlord still retained the right to file a claim against the deposits for any monies owing for **other than** damage to the rental unit. [*My emphasis*]

The landlord's earlier application for dispute resolution was a claim for damages and other unspecified monetary compensation, which was dismissed due to the lack of particulars.

Due to the above, I find the landlord extinguished his right to make a claim against the tenants' security deposit and pet damage deposit for damages to the rental unit.

I therefore find the landlord was obligated to return the tenants' security deposit and pet damage deposit, in full, no later than August 6, 2020, 15 days after the date the tenants' written forwarding address was delivered by XpressPost on July 22, 2020.

In contravention of the Act, the landlord kept the security deposit and pet damage deposit, without filing an application within 15 days for any monies owing for other than damage to the rental unit.

I therefore **order** the landlord to return the tenants' security deposit and pet damage deposit and that these amounts must be doubled.

I grant the tenants recovery of their filing fee of \$100, due to their successful application.

I therefore find the tenants have established a monetary claim of \$1,900, comprised of their security deposit of \$800, doubled to \$1,600, their pet damage deposit of \$100, doubled to \$200, and the filing fee paid for this application of \$100.

I grant the tenants a monetary order in the amount of \$1,900.

Should the landlord fail to pay the tenants this amount 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.

Caution for the landlord –

The landlord inquired if he could still make another application for dispute resolution and I answered that he should look at the Decision from his own application for dispute resolution.

I find it important to caution the landlord that the obligation to pay the amount of the monetary award granted to the tenants is effective immediately. The landlord is cautioned that he may not retain the security deposit and pet damage deposit in the event he should choose to make another application.

Conclusion

The tenants' application is granted as they are awarded a monetary award in the amount of \$1,900 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 16, 2021

Residential Tenancy Branch