



Dispute Resolution Services

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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 from the landlord for a monetary loss or other money owed; and
- recovery of the filing fee.

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

The parties confirmed receiving the other's evidence.

The parties then gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord?

Are the tenants entitled to an order requiring the landlord to return their security deposit and pet damage deposit?

Are the tenants entitled to recover their filing fee?

Background and Evidence

Filed in evidence was a written tenancy agreement between the parties, for a tenancy start date of December 1, 2020, for a fixed term through May 31, 2021, monthly rent of \$1,600 due on the first day of the month and a security deposit and pet damage deposit of \$800 each was paid by the tenants to the landlord.

The tenants' total monetary claim is \$3,200, plus the \$100 filing fee.

The tenants submitted that the tenancy ended on December 8, 2020, and they spent only one night in the rental unit.

To date, the landlord has not returned their security deposit or pet damage deposit.

The tenant submitted that they provided their written forwarding address to the landlord in an email on December 8, 2021. Filed in evidence was a copy of the email.

The tenants requested an order requiring the landlord to return the two deposits, seeking monetary compensation of \$1,600.

As to the other issue, the tenant claimed that they were compelled to move out early to avoid the health hazard of cigarette and marijuana smoke. The tenant said that the other tenant has asthma and has been advised by her doctor to avoid environments where there is cigarette smoke present. Filed in evidence was a statement from a doctor.

The tenant submitted that their tenancy agreement has a no-smoking clause and there is to be no smoking on or around the property. Despite this restriction, according to the tenant, the upstairs tenants had a separate agreement with the landlord.

The tenant submitted that they had to move out quickly for health reasons, and as such, they are entitled to a return of their first monthly rent payment of \$1,600 for December 2020.

The tenant confirmed that they did not notify the landlord prior to moving out.

Landlord's response-

As to the matter of the security deposit and pet damage deposit, the landlord said she received the email of December 8, 2020, from the tenants, confirming they moved out. The landlord said that she requested a written move-out letter from the tenants, which was the email.

The landlord confirmed that she understood that the address listed on that email was the tenants' forwarding address.

As to the claim for a return for their first monthly rent payment, the landlord submitted that she was never notified by the tenants that there were any issues with the rental unit and they moved out without notification. The landlord said she was never given an opportunity to resolve the issue with the tenants.

The landlord denied that the source of cigarette and marijuana was from her residential property, as it is located by other complexes, where there are residents who smoke cigarettes and marijuana. The landlord pointed out that marijuana is legal and she cannot prevent people from neighbouring homes from smoking it.

The landlord said that her current tenants have never raised an issue about cigarette or marijuana smoke.

Filed in evidence were Facebook messages, upstairs tenants' letters, and a property manager letter.

Analysis

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

Return of the December 2020 monthly rent payment –

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the evidence shows the parties signed a written tenancy agreement for a tenancy start date of December 1, 2020, a fixed term through May 31, 2021, and a monthly rent of \$1,600.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month that is **not earlier than the end of the fixed term**.

Here, the tenants were obligated to pay the monthly rent on December 1, 2020, per the written contract and could not end the tenancy legally prior to the end of the fixed term of May 31, 2021.

If the tenants believed the rental unit was not in a state as agreed upon or did not meet health or safety standards, I find their remedy was to file an application for dispute

resolution seeking orders for the landlord's compliance with the Act, in particular, section 32.

Instead of filing an application for dispute resolution or notifying the landlord of potential issues with the rental unit, the evidence shows they vacated the rental unit without notice to the landlord. The landlord never had a chance to address the issues.

As the tenants were contractually obligated to pay the monthly rent for December 2020, I **dismiss** their monetary claim of \$1,600, for the reimbursement of that rent.

Return of the security deposit and pet damage deposit –

Under section 38(1) of the Act, a landlord must either repay a tenant's security deposit and pet damage deposit or file an application for dispute resolution claiming against the security deposit and pet damage 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 with the Act, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

Section 44(d) of the Act states that one way a tenancy ends is when the tenant abandons or vacates the rental unit.

In the case before me, the end of the tenancy was December 8, 2020, the date the tenants officially vacated the rental unit.

Email communication is not an approved method of delivery of documents under the Act.

I, however, order that the tenants' written forwarding address was sufficiently served on the landlord for the purposes of section 88 of the Act in the email of December 8, 2020, under section 71(1)(b) of the Act, as it was specifically confirmed by the landlord that she received the tenants' email notice to vacate and recognized that the address listed on the emailed letter was the tenants' forwarding address.

Due to the above, I find the landlord was obligated to repay the tenants' security deposit and pet damage deposit or make an application for dispute resolution claiming against the deposits by December 23, 2020, 15 days after she was served the tenants'

forwarding address on December 8, 2020. In contravention of the Act, the landlord retained the security deposit and pet damage deposit, without filing an application.

I therefore find the tenants are entitled to a return of their security deposit of \$800 and their pet damage deposit of \$800.

Residential Tenancy Branch (RTB) Policy Guideline 17 provides that unless the tenant has specifically waived the doubling of the deposit, either in an application or at the hearing, the arbitrator will order the return of double the security deposit and pet damage deposit under these conditions.

As the tenants' application did not request the security deposit and pet damage deposit be doubled, and the tenant confirmed at the hearing they are only seeking their security deposit and pet damage deposit returned, I have not doubled these amounts.

I therefore order the landlord to return the tenants' security deposit and pet damage deposit.

I also grant the tenants recovery of their filing fee paid for this application, in the amount of \$100.

To give effect to this order, I find the tenants have established a total monetary claim of \$1,700, comprised of their security deposit of \$800, pet damage deposit of \$800, and the filing fee of \$100.

I grant the tenant a monetary order in the amount of \$1,700, pursuant to section 67 of the Act.

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.

Conclusion

The tenants' application for a return of their December 2020, rent is dismissed.

The portion of the tenants' application seeking a return of their security deposit and pet damage deposit has been granted, along with their request for their filing fee of \$100.

The tenants are granted a monetary order in the amount of \$1,700.

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: May 28, 2021

Residential Tenancy Branch