Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FTT MNSD

Introduction

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

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

The tenants were represented by counsel ("**JS**"). The corporate landlord ("**CNR**") and landlord TK were represented by counsel ("**SS**"). Landlord TK attended the hearing. The corporate landlord was also represented by an agent ("**ET**"). Landlord RL did not attend this hearing (or any of the preceding hearings) and was not represented. I will refer to CNR and TK collectively as the "landlords" for the balance of this decision. I will refer to RL by his initials.

This hearing was preceded by four prior hearings (heard by me on May 12, July 17, September 11, and November 16, 2020). I have issued interim decisions following these hearings, which should be read in conjunction with this decision.

Following this hearing, I ordered the parties to provide written closing submissions to the Residential Tenancy Branch (the "**RTB**") and to one another. Each side had an opportunity to review the other's submissions and provide a written response. I have reviewed these submissions prior to writing this decision.

Preliminary Issue – Amount of Tenants' Claim

In the opening paragraph of their written submissions, the tenants wrote:

> The tenant claims for a return of the double the deposit (s.38(6)). The deposit was $7990.00 and the tenant claims $15980.00.

This amount differs from their application, wherein they sought an order for the return of the Deposits only ($7,990). However, these written submissions are consistent with the oral submissions of JS throughout the proceedings.

In their written submissions, the landlords raised no objection to this increased amount to the tenants' claim. Similarly, the landlords raised no objection to JS's remarks about the landlords seeking double the amount of the Deposits during the hearings. Both the landlords' and tenants' written submissions were drafted to address the tenants' claim for an amount equal to double the Deposits.

As such, I amend the tenants' application to include a claim for an amount equal to double the Deposits ($15,980).

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $15,980 representing the return of double the amount of the Deposits;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties and their witnesses, not all details of their submissions and arguments are reproduced here. As I describe below, the parties are engaged in litigation relating to the tenancy in the BC Supreme Court (the "**Civil Claim**"). Much of the evidence presented at these hearings was relevant to that action as well. Indeed, some of the lines of question on cross-examination of the witnesses during the hearings seemed to relate more to the issues at bar in the Civil Claim than to those in this proceeding. I cautioned counsel against such behavior.

I will set out only the facts necessary to make a determination on the issues before me today.

The tenants and CNR entered into a written, fixed-term tenancy agreement starting August 15, 2019 and ending April 30, 2020. Monthly rent was $7,990 and was payable on the 15th day of each month. The tenants paid CNR a security deposit of $3,995 and a pet damage deposit of $3,995. CNR continues to hold the Deposits in trust for the tenants.

The tenants make two arguments on which they claim entitlement to an amount equal to double the Deposits:

1) the landlord's right to retain the Deposits has been extinguished; and
2) the landlords failed to return or claim against the Deposits within 15 days of the landlord receiving their forwarding address.

I will address each of these in turn.

1. Extinguishment

TK (a director of CNR) and MD (an agent of the tenants) conducted a move-in condition inspection of the rental unit on August 15, 2019. MD testified that she signed a copy of the move-in condition inspection report (the "**Move-In Report**") that TK provided her, gave it back to TK, and that he never provided her or the tenants with a copy.

The tenants argue that this failure to provide them with a copy of the Move-In Report extinguishes the landlords' right claim against the Deposits, pursuant to section 24(2) of the Act.

TK testified that he gave a copy of the Move-In Report to MD to sign on August 15, 2019, but that she did not return it to him immediately. He testified that MD told him she wanted to do a walkthrough with the tenants herself. He testified that MD left a signed copy of the Move-In Report with the building's concierge, which TK's assistant ("**ET**") later picked up. ET confirmed this. He testified that the tenants retained the original copy of the Move-In Report that he left with MD. He testified that he believed the Move-In Report was signed by tenant MF.

On September 30, 2019, the tenants gave written notice to CNR that they were terminating the tenancy effective November 15, 2019. As the circumstances leading to the ending of the tenancy is the subject of the Civil Claim, and are not relevant to the tenants' application, I will not discuss the reasons for the tenants' ending it.

The tenants vacated the rental unit on or before November 15, 2019.

The tenants deny that CNR provided them two opportunities to conduct a move-out condition inspection, as required by section 35(2) of the Act. KF testified that she did not receive any notification (be it by phone, text message, email, or otherwise) regarding the move-out inspection. She testified that MD was not an agent of the tenants at the time of the move-out, so any communications sent to her do not constitute proper notice to the tenants.

The landlords argued that MD was the tenants' agent at the time the tenancy ended. TK gave evidence that, on November 16, 2019, another employee of CNR ("**DW**") emailed MD at an address she used to communicate with the landlords during the tenancy offering two times to do the move-out condition inspection on November 17, 2019. MD did not respond. TK and ET attended the rental unit on November 17, 2019. TK testified that neither the tenants nor MD attended. TK and ET conducted the move out inspection in their absence and prepared a move out condition inspection report (the "**Move-Out Report**").

DW emailed MD on November 18, 2019 and provided a "Notice of Final Opportunity to Schedule A Condition Inspection" form, a copy of the Move-Out Report, and offered to conduct a second move-out condition inspection on November 19, 2019. The landlords

did not receive any reply and neither MD nor the tenants attended the rental unit on November 19, 2019.

MD testified that she did not receive either of these emails. TK testified he has access to DW's email account (which he testified is used as a corporate account for CNR) and that DW's email account did not receive any email notification that either email was "undelivered". The landlords argue that these emails constitute effective service of the "Notice of Final Opportunity to Schedule A Condition Inspection" form.

The landlords argue that the tenants' right to the return of the Deposits has been extinguished pursuant to section 36(1) of the Act, as they failed to attend the November 19, 2019 inspection.

The tenants advanced three arguments in response to this claim:

1) the emails were not authentic;
2) the tenants were not properly served with the "Notice of Final Opportunity to Schedule A Condition Inspection" form, as email is not a permitted method of service under the Act; and
3) in any event, MD was not an agent of the tenants when the emails were sent.

For reasons set out below, it is not necessary for me to expand on these arguments.

The tenants argue that, as the "Notice of Final Opportunity to Schedule A Condition Inspection" form was not properly served, the landlords' right to claim against the Deposits was extinguished pursuant to section 36(2) of the Act.

2. <u>Service of Tenants' Forwarding Address</u>

On December 2, 2019, JS emailed a letter to the corporate email address of the CNR. Attached to this email was letter of the same date demanding the return of the Deposits (the "**December 2nd Letter**"). It stated:

> Please make arrangements to return the deposit monies to the [tenants]. You may communicate with me to make this arrangement. Failure to communicate with me by noon of Wednesday this week, December 4th, will result in an escalation of our approach.

The December 2nd Letter did not explicitly set out a forwarding address for the tenants but did contain JS' mailing address in the footer.

TK denied that he or CNR received this email.

KF testified that JS texted TK and/or CNR on December 6, 2019 and December 10, 2019 regarding the December 2nd Letter. TK denies receiving any such text messages.

At the hearing TK denied receiving a phone call from JS regarding the December 2nd Letter. He testified he did receive a phone call from someone who did not identify himself on December 10, 2019 and that this individual intimidated him with defamatory comments, so he hung up. In their submissions, the landlords argued that, following this phone call TK advised DW of the call, and DW emailed MD as follows:

> [TK] received a strange call from someone who called on your behalf but did not leave any details. He was very confrontational and defamatory about our company. Can you please confirm who this individual is whether or not he is representing you? We will not tolerate any more of this hostility and ask that we maintain professional communication moving forward.

However, this email was dated November 16, 2019, so I do not understand this email to be describing a call made on December 10, 2019.

On December 12, 2019, JS drafted a second letter (the "**December 12th Letter**"), which stated:

> Further to our December 2, 2019, letter to you and my telephone call to you of that date we have not yet heard back from you with regard to a move out inspection report or a return of the [tenants closed bracket security deposit and pet damage deposit ($7990).
>
> As stated in our December 2, 2019 letter, you may use my office address as a forwarding address [redacted].

The tenants engaged a process server to serve the CNR with the December 2nd and December 12th Letters at the address for service listed on the tenancy agreement (the "**Barclay Address**"). The process server attempted to serve these documents on December 18, 2019 but was unable to do so.

On December 10, 2019, the tenants filed this application at the RTB. The RTB provided the tenants with a Notice of Dispute Resolution Proceeding on December 13, 2019. The tenants sent this Notice and an accompanying evidence package via registered mail on December 13, 2019 to the address listed as CNR's registered and records office with BC Registry Services (the "**Burrard Address**"). The December 2nd and December 12th Letters were contained in the evidence package and listed on the Notice as "Proof Address Was Provided: letters giving forward address and requesting damage deposit return."

This registered mailing was never received by the landlords. TK testified that, some time in November 2019, CNR had relocated its business from the Burrard Address to a new location (the "**Commercial Address**"). He admitted that CNR had not updated its registered and records office with BC Registry Services in November to reflect this change, but testified he believed CNR did so sometime in December 2019, but that

there was have been a delay between when they provided the updated information to BC Registry Services and when the information was updated in the system. The landlords argued that, even though a registry search on December 6, 2019 indicated CNR's registered and records office was at the Burrard Address, the reality was that it had not been so since November 2019.

TK testified that on November 15, 2020, CNR posted a 10-Day Notice to End Tenancy for Non-Payment of Rent on the door of the rental unit, and that this notice listed the landlord's address for service as the Commercial Address. Additionally, the landlords listed the Commercial Address as its "address at the end of tenancy" on the Move-Out Report, dated November 17, 2019. The landlords argue that this indicates that they did not carry on business at the Burrard Address on December 13, 2019 (when the December 2nd and 12th Letters were sent to it by registered mail), and as such, they cannot be served there by registered mail, per section 88 of the Act.

In the first hearing on this matter (on May 12, 2020), I deemed that the Notice of Dispute Resolution Proceeding and supporting evidence package had been served by the registered mailing to the Burrard Address. I also ordered that these documents be re-served via email to CNR's then-counsel. TK did not attend the May 12, 2020 hearing, and CNR's then-counsel did not advise me that CNR had vacated the Burrard Address.

TK testified that he did not receive the December 2nd or December 12th Letters until August 2020 when they were served upon him by the tenants pursuant to an order made on July 24, 2020 which also added TK as a party to this application. I cannot say why he did not receive these letters from CNR's then-counsel when they were sent to him pursuant to the May 12, 2020 interim decision.

In any event, on May 6, 2020 (prior to the first hearing in this proceeding), the landlord filed the Civil Claim against the tenants claiming $47,940 in lost rent as a result of the tenants breaching the fixed term tenancy agreement. They did not specifically seek an order that they retain the Deposits.

The tenants also mailed the December 2nd and 12th letters to CNR and TK via registered mailing to the Barclay Address and Burrard Address on April 24, 2020. The tenants seek that I draw the inference that since CNR filed the Civil Claim on May 6, 2020 and attended the May 12, 2020 hearing, that they received one or both of these mailings.

3. Are TK and RL Landlords?

The parties provided submissions on whether TK was properly a landlord or whether he should be liable personally for any judgment made against CNR. I will not repeat these arguments in this decision, as, for the reasons set out below, I do not find it appropriate to make any monetary order in favour of the tenants. Accordingly, it is not necessary for me to determine which of the respondents are properly landlords under the Act

Analysis

The tenants rely on section 38 of the Act as the basis to their claim for an amount equal to double the deposits. Section 38(6) of the Act grants an arbitrator the authority to order the landlord to pay the tenant double the amount of the security deposit. It states:

> **Return of security deposit and pet damage deposit**
> (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.

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.

As such, it must be determined when the tenancy ended and when the tenants provided their forwarding address to the landlords.

Section 44(1)(d) of the Act states that a tenancy ends when a tenant vacates or abandons the rental unit. The parties agree the tenants vacated the rental unit by November 15, 2019.

In their written submissions, the landlords argued that a fixed-term tenancy cannot be ended earlier than the fixed date except in three circumstances:

1) the parties agree;
2) household violence; or
3) tenant requiring long-term care at a facility.

I disagree. These are circumstances where a fixed-term tenancy may be ended without a tenant breaching any obligations owed to a landlord under the Act or tenancy agreement. There are other ways that a tenancy made by ended under the Act (by way of a notice to end tenancy for non-payment of rent or for cause, for example).

I find that, by the tenants vacating the rental unit, the tenancy ended. This may have been a breach of the tenancy agreement, or this may have been in accordance with the *Strata Property Act* (this is the subject of the Civil Claim, so I make no finding on the issue). If it was a breach of the tenancy agreement, the landlord would be entitled to recover damages that flowed from that breach, and would have to mitigate their losses, as set out at section 7 of the Act. The tenancy does not continue, and the landlord is not entitled to recover rent pursuant to the tenancy agreement once the tenants vacated the rental unit.

1. Service of Forwarding Address

The date the tenancy ended (at the latest, November 15, 2019) is earlier than any of the dates the forwarding address is claimed to have been given to the landlords. As such, I must when the forwarding address was provided in order to calculate whether the landlord acted within the proscribed timelines of section 38(1) of the Act.

The tenants argued that they served the landlords with their forwarding address on December 2, 2019, December 13, 2019 and April 24, 2020. The landlords argued that they did not receive the forwarding address until August 2020.

a. Was the forwarding address served on December 2, 2019?

KF testified that JS emailed the landlords a letter containing the forwarding address on December 3, 2019. A copy of this email was not entered into evidence. Landlord TK confirmed that the email addresses the letter was sent to was one that the landlord monitored but testified that he did not receive the email attaching the letter.

The testimonies of KF and TK are not necessarily contradictory. It is possible that the email was sent as KF testified, but that TK did not receive it, or that he overlooked it, or that it went into a junk folder and was never viewed by him. It is because of such possibilities that sections 88 and 89 of the Act do not allow email as a method of service (I note that, in 2021, the *Residential Tenancy Regulations* introduced some narrow circumstances where service by email is permissible, but these circumstances do not apply to the situation at hand).

I note that, in in the July 2020 interim decision, I ordered that the email address to which the December 2nd Letter was sent could be used by the tenants to serve the landlords. This order did not retroactively apply to any other documents sent by email to the address. Once the order was made, the landlords were put on notice to vigilantly

monitor this email address for future communication relating to the tenancy and this application for dispute resolution. Prior to the making of the order, they may not have done so.

I find that that an email attaching the December 2nd Letter did not function to serve the landlord with the tenants' forwarding address in accordance with the Act. In light of the conflicting testimony of the parties, and that the December 2nd Letter did not explicitly state that JS's office address was the tenant's forwarding address, I decline to exercise my discretion under section 71(2) of the Act to deem that the tenants' forwarding address had been served by the December 2, 2019 email.

b. Was the forwarding address served on December 13, 2019?

The tenants also argued that their forwarding address was served on December 13, 2019, as part of the evidence package in support of this application sent by registered mail to the registered and records office of landlord CNR.

The parties agree that, as of December 13, 2019, the corporate registry search shows that CNR's registered and records office is at the Burrard Address. However, TK's evidence is that CNR did not carry on business at that location. The fact that CNR listed the Commercial Address as its address for service on the Move-out Report and on the November 15, 2019 10 Day Notice corroborate his testimony.

Section 88(c) of the Act permits service of documents by registered mail on a landlord as follows:

> **How to give or serve documents generally**
> 88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> […]
>
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 9 of the *Business Corporations Act* permits the service of documents for the purposes of litigation to a corporations registered and records office:

> **Service of records in legal proceedings**

> 9(1) Without limiting any other enactment, a record may be served on a company
> (a) unless the company's registered office has been eliminated under section 40, by delivering the record to the delivery address, or by mailing it by registered mail to the mailing address, shown for the registered office of the company in the corporate register,
> (b) if the company's registered office has been eliminated under section 40, in the manner ordered by the court under section 40 (4) (b), or
> (c) in any case, by serving any director, senior officer, liquidator or receiver manager of the company.

However, RTB Policy Guideline 12 states:

> SERVICE OF DOCUMENTS ON AN INCORPORATED COMPANY OR SOCIETY
> Service on a landlord that is an incorporated company or society should be made by serving a copy at the place where the landlord conducts business as a landlord, as provided in the Legislation.
>
> Special attention should be paid to the fact that tenancy legislation service requirements differ from provisions in the *Business Corporations Act* or the *Society Act*. The registered office of a landlord that is an incorporated company or a society, such as a lawyer's office or accountant's office, may not necessarily be the address at which the landlord carries on business as a landlord. When these are different, service on the registered office may not be adequate service for the purposes of the Legislation.

I accept TK's testimony that, on December 13, 2019, CNR no longer occupied the Burrard Address. I accept that CNR did not immediately update its corporate information with the BC Corporate Registry.

As such, I find that none of the landlords carried on business as a landlord at the Burrard Address on December 13, 2019. Accordingly, per Policy Guideline 12, I find that the forwarding address could not have been served by registered mail to the Burrard Address.

As stated above, in my May interim decision I deemed that the evidence package sent via registered mail to the Burrard Address was served. At the May hearing I did not have the benefit of reviewing the above-mentioned excerpt of Policy Guideline 12; neither party referred to it.

Additionally, the CNR's then-counsel did not advise me that CNR no longer occupied the Burrard Address (I note that I have no reason to think that he had any knowledge of the address where CNR carried on business).

In any event, in the May interim decision, I adjourned the hearing to obtain submissions on the issue of jurisdiction and ordered the tenant to serve CNR with the evidence package via email.

At the May 12 hearing, I was presented with less information than I now have. Had I had the same information then as I have now I would likely have phrased my order differently.

I do not find that my deeming of the evidence packing being served via registered mail in the May interim decision is determinative as to when the forwarding address was provided to the landlords. The December 2nd and December 12th Letters were not mailed to the landlords on December 13, 2019 as a piece of communication. Rather, they were included in the tenants' evidence package as evidence.

As a piece of evidence, the forwarding address would be easily overlooked. Different obligations arise when receiving a letter as a piece of communication than when one is received as a piece of evidence. When a letter is received as a piece of evidence, it is not reasonable to expect a party to respond or act on the contents of that letter. Rather, it is reasonable to expect them to consider the letter in the context of the litigation and analyze how it supports part of the argument that the sender is making. Indeed, these letters were identified on the Notice of Dispute Resolution as "Proof Address Was Provided: letters giving forward address and requesting damage deposit return." This implies that the letters are proof the forward address was already provided (that is, the provision of the forwarding address has already occurred, and the letters prove this to be the case).

I do not find that including letters containing an address for service in an evidence package, which identifies these letters as *proof* the forwarding address was served constitutes the service of a forwarding address on the recipient of the evidence package.

Accordingly, I find that the tenants did not serve the landlords with the forwarding address as part of the December 13, 2019 registered mailing.

c. Was the forwarding address served on April 24, 2020?

It is not necessary for me to determine if the forwarding address was served in accordance with the Act on April 24, 2020. The landlord filed the Civil Claim on May 6, 2020, which is fewer than 15 days after April 24. As such, CNR complied with time window set out in section 38(1) of the Act.

I do not find the fact that CNR failed to specifically seek an order that it may retain the Deposits in partial satisfaction of the amount they are claiming to cause it to fail to satisfy section 38(1) of the Act. Section 72(2)(b) of the Act allows the Deposits to be offset against any monetary order made pursuant to the Act. Indeed, the purpose of a "security deposit" is to provide the landlord with "security for any liability or obligation of the tenant respecting the residential property". Loss caused by an alleged breach of a fixed term tenancy agreement falls within this purpose. I find that by making a monetary claim that the Deposits could be credits towards, the landlords have fulfilled the section 38(1) requirements.

I am also satisfied that, by making the Civil Claim, the landlords satisfied their requirement to "make an application for dispute resolution". An "application for dispute resolution" is an RTB process brought pursuant to section 58(1) of the Act. The Civil Claim was not brought pursuant to this section. However, as the amount sought in the Civil Claim exceeds the amount that the RTB has jurisdiction to award, I find that it would be unreasonable to require CNR to bring an application for dispute resolution to the RTB, as it would essentially require them to abandon a large portion of their claim. In the circumstances, I find that the making of the Civil Claim satisfies the requirement to make an application for dispute resolution. To find otherwise would artificially cap the amount a landlord may claim against a tenant after a tenancy has ended.

2. Extinguishment

The Act does not contain a provision which stands for the proposition that a landlord must pay double the amount of a deposit to the tenant in the event that their right to claim against the Deposits has been extinguished.

Rather, the Act sets out the consequence for what may happen if a landlord's right to claim against the security deposit s extinguished at section 38(5):

> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in

> relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

Section 38(4)(a) of the Act states:

> (4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

The tenants do not set out the authority upon which they rely on for the proposition that, if the landlords' right to claim against the Deposits has been extinguished, they are entitled an amount equal to double the Deposits.

Policy Guideline 17 sets out the circumstances when a tenant may be entitled to recover double the amount of a deposit from a landlord:

> 3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
>
> • if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> • if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
> • if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
> • if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
> • whether or not the landlord may have a valid monetary claim.

The tenants have not suggested the Civil Claim is frivolous or an abuse of process. The Civil Claim is not one where the landlord is claiming for compensation for damage to the rental unit (it is for loss of ability to earn rental income from the rental unit due to the tenants' alleged breach of the tenancy agreement). The tenants have not agreed in

writing that the landlords could retain any portion of the Deposits. Accordingly, there is no basis in Policy Guideline 17 for awarding an amount equal to double the Deposits due to the landlord's right to claim against them being extinguished.

Policy Guideline 17 does not articulate why it makes a distinction between claims for damage to a rental unit and other claims. It cites sections 24(1), 36(1), 38(2) and 38(6) of the Act for this proposition. Sections 24(1), 36(1) and 38(2) relate to the tenant's right to the return of a deposit being extinguished and are not relevant to this application. Section 38(6) is reproduced above. As can been seen from the plain text of that section, it makes no mention of extinguishment triggering an award of double the deposit to a tenant. It refers only to a failure to comply with section 38(1), which itself makes no reference to extinguishment.

As set out above, the Act does contain consequences that flow from a landlord's right to claim against a deposit being extinguished generally: per section 38(5) of the Act, if the landlord's right is extinguished, the landlord may not enter into an agreement with the tenant by which he may retain a deposit.

I do not understand this section to authorize the awarding of double a security or pet damage deposit solely on the basis that the landlord's right to claim against it has been extinguished.

In light of this, and as Policy Guideline 17 does not provide an analytic basis for why it restricts the doubling of a deposits to circumstances where a landlords right to claim against a deposit is extinguished and they claim against it due to alleged damage to a rental unit, I decline to expand the scope of when a tenant may be entitled to recover an amount equal to double the deposit to circumstances such as are present in the current case (that is, where a landlord's right to claim against the deposits may have been extinguished, and the landlords have claimed against it for loss of income caused by a breach of a tenancy agreement).

Accordingly, it is not necessary for me to determine whether the landlords' right to claim against them has been extinguished, as even if this were the case, it would not lead to the relief sought by the tenants.

Additionally, it follows that I do not need to determine if the tenant's right to the return of the Deposit has been extinguished. The issue of CNR's entitlement to the Deposits is part of the Civil Claim and will be adjudicated by the BC Supreme Court.

As such, there are no grounds upon which the tenants can obtain the order sought. As such, I dismiss the tenants' application, in its entirety, without leave to reapply.

There is therefore no need for me to determine whether TK or RL are properly named as respondents on the application.

Conclusion

I dismiss the tenants' application, in its entirety, without leave to reapply.

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 17, 2021

Residential Tenancy Branch