



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACAULAY SORENSON BOWERS &
CONSTRUCTION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application. The amendment adds an individually named landlord as a respondent in addition to the landlord company named in the original application.

The tenant and the individually named landlord attended the hearing, and the landlord also attended as agent for the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidentiary material was exchanged, however the tenant insisted that he gave more evidence to Service BC to upload than what appears on the Case Management System.

At the commencement of the hearing the tenant applied to amend the application again to add the name of the landlord that appears on the tenancy agreement. The landlord did not oppose the amendment, and the amendment was permitted. The frontal sheet of this Decision reflects that amendment.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for return of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for an overpayment of rent?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2018. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies that the fixed term expires on May 31, 2019 and then the tenant must move out of the rental unit. The tenant vacated the rental unit on April 27 or 28, 2021. Rent in the amount of \$1,100.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a complex.

The tenant further testified that a previous written tenancy agreement was entered into by the parties, which specified rent in the amount of \$1,050.00 per month, and the tenant does not understand why a copy has not been uploaded to the Residential Tenancy Branch automated system. The tenant was at the office 5 times for assistance with uploading evidence. The only documents that have been uploaded to the system are: a 2-page document entitled "Digital Evidence Details," Form #RTB-43 signed by the tenant on July 2, 2021; a RTB Evidence form indicating receipt of a USB stick with video evidence received by Service BC on July 2, 2021; a video of the rental unit; and the same evidence several times.

However, the tenant testified that the carpets that were in the rental unit had been damaged prior to the tenancy and the landlords couldn't get them clean enough, so installed new ones at the tenant's expense, and the tenant had to sign a new tenancy agreement with an increase of rent of \$50.00 per month because he had no where to go. The tenant seeks 34 months of the unlawful rent increase at \$50.00 per month, for a total of \$1,750.00.

The tenant also testified that he gave a notice to end the tenancy which contained the tenant's forwarding address in writing to the landlord's caretaker on March 3, 2021. The

notice was effective April 30, 2021. The caretaker also signed it. However, the caretaker told the tenant that the caretaker had lost it, so on March 24, 2021 the tenant gave another notice to end the tenancy to the caretaker, a copy of which has been provided for this hearing but the tenant's forwarding address is not on the copy. The copy provided for this hearing is dated March 24, 2021 and contains an effective date of vacancy of May 1, 2021.

The tenant further testified that the landlords' caretaker was on medication and not well, as well as being on drugs after knee surgery, and was eventually fired by the landlords.

No move-in or move-out condition inspection reports were completed. The copy of the move-in condition inspection report provided in the landlords' evidence has been forged; it doesn't even spell the tenant's name correctly, and the tenant testified that he did not sign it.

The landlord attempted to schedule a move-out condition inspection but the tenant couldn't get to the appointments. The landlords did not serve a Notice of Final Opportunity to Schedule a Condition Inspection.

The tenant seeks \$1,750.00 for the overpayment of rent and \$550.00 for recovery of the security deposit, in addition to the \$100.00 filing fee.

The landlord testified that the previous tenant was evicted and the landlord cleaned the carpet and it didn't come clean to the satisfaction of the tenant. The landlord agreed to replace it if the tenant would pay an additional \$50.00 per month. The new carpet was installed on June 1, 2018. The first tenancy agreement that the parties signed was not kept.

The move-in condition inspection report was done by the caretaker, or resident manager, and the landlord would not have expected that the caretaker would sign it on behalf of the tenant or incorrectly spell the tenant's name. The landlord glanced and compared the tenant's signature on the move-in condition inspection report to the tenancy agreement but not too carefully because the landlord had no reason to.

The landlord received the tenant's application by registered mail on July 12, 2021 and that's when the landlord received the tenant's forwarding address. The only evidence that the landlord received from the tenant is a video.

The landlord didn't give the Notice of Final Opportunity to Schedule a Condition Inspection because the parties were cordial. The first opportunity offered was on April

30 and when that didn't work out, the caretaker scheduled it for 10:30 the next morning. The landlord showed up concerned it might not be clean enough to prepare for new tenants, and the date and time were verbally agreed to by the tenant. The landlord completed the move-out condition inspection report in the absence of the tenant. The landlord asked the caretaker to contact the tenant to complete it before noon, and the caretaker reported that the tenant was angry.

The caretaker is no longer working for the landlord; is not well and had surgery and couldn't do the job for health reasons. The caretaker's duties were general upkeep of the building, showing units to prospective tenants, move-in and move-out reports, tenancy agreements, letting in service people and collecting rent and issuing receipts.

Since the tenant didn't attend for the move-out condition inspection report, the landlord submits that the tenant's right to make a claim for the security deposit is extinguished.

The landlords' photographs provided for this hearing were taken on May 1, 2021, and the rental unit was re-rented for the same day. The landlord has not served the tenant with an Application for Dispute Resolution claiming the security deposit.

Analysis

Firstly, dealing with the rent increase, where parties sign a tenancy agreement they are bound by its terms. Therefore, I cannot make a finding that the tenant has established that any rent increase was unlawful, and I dismiss the tenant's application for monetary compensation in that regard.

With respect to the security deposit, I have reviewed the signature of the tenant on the tenancy agreement and compared it to the signature on the move-in portion of the inspection report, and I disagree with the landlord that the signatures are similar, and I find that they are far from the same and the tenant's name is incorrectly spelled.

The *Residential Tenancy Act* specifies that an agent of the landlord is a landlord, and given that there is no doubt in my mind that the caretaker forged the tenant's signature, I also accept the testimony of the tenant, on a balance of probabilities, that the tenant originally gave the caretaker a notice to end the tenancy on March 3, 2021 which contained the tenant's forwarding address in writing.

The landlords' position is that the tenant's right to claim the security deposit is extinguished because the tenant failed to attend the move-out condition inspection. However, I find that the landlords' breach occurred first, in that the move-in condition

inspection report was not completed in accordance with the regulations, which is the landlords' responsibility. Further, the landlords did not provide the tenant with the Notice of Final Opportunity to Schedule a Condition Inspection in the approved form. Therefore, I find that the landlords' right to claim against the security deposit for damages is extinguished.

I also find that the landlords had an obligation to return the security deposit to the tenant or to make an application claiming against the security deposit with 15 days of the date the tenancy ended, being April 30, 2021. The landlords have not done either, and I find that the tenant is entitled to double the amount or \$1,100.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlords in the amount of \$1,200.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00.

This order is final and binding and may be enforced.

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 31, 2021

Residential Tenancy Branch