Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND-S, MNDC-S MNR-S, FF
For the tenant: MNDC, FF

Introduction, Preliminary and Procedural Matters-

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenant applied for the following:

- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The hearing began on January 21, 2021, and could not be concluded and was adjourned. This 48 minute hearing dealt only with the evidence issues raised by the parties. An Interim Decision was rendered on January 22, 2021, and that Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The landlord, the landlord's legal counsel (counsel), the tenant, and the tenant's witness, who did not testify, were present for the first reconvened hearing on April 27,

2021, which resumed to hear the evidence and submissions of the landlord in support of his application and the tenant's response.

The first reconvened hearing continued for 111 minutes, during which time the landlord submitted oral evidence and the tenant provided a response relating to the landlord's application. Both parties were allowed one final opportunity to provide a rebuttal and surrebuttal, respectively.

Additionally, the parties at this hearing again raised evidence issues.

Due to the length of time of the first reconvened hearing, it was not possible to begin the hearing on the tenant's application. Therefore, a second Interim Decision was issued on April 27, 2021, which is incorporated by reference and should be read in conjunction with this final Decision. The additional evidence issues were dealt with in the second Interim Decision.

The landlord, the tenant, and the tenant's witnesses were present for the second reconvened hearing on May 31, 2021, which resumed to hear the evidence and submissions of the parties on the tenant's application. The landlord's counsel was present for a part of the second reconvened hearing, and departed shortly thereafter due to a conflict with their court schedule. The tenant's witness present for the first reconvened hearing again did not testify.

The second reconvened hearing continued for 135 minutes, during which time the tenant and her other witness provided testimony and submissions. Additionally, other issues relating to the landlord's conduct at the hearing were addressed.

Due to the length of time of the second reconvened hearing, it was not possible to begin and conclude the landlord's response to the tenant's application. Therefore, a third Interim Decision was issued on May 31, 2021, which is incorporated by reference and should be read in conjunction with this final Decision.

The third reconvened and final hearing began on September 28, 2021, and was attended by the landlord, the landlord's new representatives, and the tenant.

At the hearings, both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted in accordance with the Residential Tenancy Branch Rules of Procedure (Rules), and make submissions to me.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rules. 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.

I was provided a considerable amount of evidence from the parties including: testimony; written submissions; digital evidence; legal submissions, and photographic evidence, all of which has been reviewed. Due to the sheer volume of oral and written evidence, it has not all been referenced in this Decision. The principal aspects of the landlord's and the tenant's claim and my findings around it are set out below.

Further, I have used my discretion under Rule 3.6 to decide whether evidence is or is not relevant to the issues identified on the application and decline to consider evidence that I deem is not relevant.

As another preliminary issue, the landlord's advocates submitted evidence the day before the hearing, despite being informed in the previous Interim Decisions that additional evidence was not allowed. The advocates argued that the submissions were not evidence, but simply case law and previous RTB dispute resolution decisions, forming their legal submissions.

The advocates were permitted to make their oral arguments referring to the case law and previous decisions, despite not having served this material to the tenant.

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

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, authority to retain the tenant's security deposit and pet damage deposit to use against a monetary award, if awarded, and to recover the cost of the filing fee?

Is the tenant entitled to monetary compensation from the landlord and to recover the cost of the filing fee?

Background and Evidence

The tenancy began March 21, 2020, with a fixed-term through March 31, 2021, monthly rent of $1,450, and a security deposit and pet damage deposit of $725, each, being paid by the tenant to the original landlord. Filed in evidence was the original tenancy agreement. I note on September 29, 2020, a previous Decision granted permission to the landlord to keep $100 from the security deposit and found that reduced the security deposit to $625.

The landlord purchased the residential property from the original landlord and assumed ownership in July 2020. The rental unit was described as a “Laneway”, separate and apart from the main house. The parties entered into a separate tenancy agreement, listing a start date of August 13, 2020, for a fixed-term through March 31, 2021. The monthly rent remained at $1,450. Filed in evidence was a copy of that tenancy agreement.

The tenancy ended on or about September 28, 2020. The landlord said he has retained the tenant’s security deposit and pet damage deposit, having made this claim against the deposits.

The parties agreed that the landlord had received the tenant’s forwarding address provided in an email, by September 30, 2020.

Landlord’s application –

The landlord’s original monetary claim was $8,775, as listed on the amended application of December 24, 2020, comprised of $2,400 for touch-up paint and repairs, a locksmith charge of $250, loss of rental income of $5,800, unpaid utility charges of $30 for water and $95 for gas, and the application filing fees of $200. I note on the monetary order worksheet, the landlord listed the $5,800 claim as aggravated damages and the request for two filing fees included a fee of $100 from a previous dispute resolution matter.

At the hearing, the landlord submitted that he has reduced his claim to $2,750, comprised of $2,400 for touch-up paint and repairs, a locksmith charge of $250, and the application filing fees of $200. The landlord has claimed $100 as a filing fee for a separate and unrelated application.

In support of his application, the landlord submitted that the move-out inspection was done by a third party inspection, without the tenant present, after advising the tenant he was not comfortable doing an inspection. The landlord confirmed the tenant was not present for, or invited to, the move-out inspection.

The landlord submitted that the costs of repairs included repair of excessive nail holes, which were too large to repair, and also damages to the flooring, and cleaning. The landlord said that the damage was beyond reasonable wear and tear, based upon the condition at the beginning of the six month tenancy. Filed in evidence were up-close photographs of landlord's areas of concern in the rental unit, a move-out condition inspection report (Report) and a breakdown of repairs listed by a third party contractor, emails between the parties on various matters, and receipts for the costs claimed.

As to the claim for the locksmith charge, the landlord submitted that when the tenant vacated, she never returned the key to the rental unit, even though he asked the tenant to put the keys in the mailbox. Filed in evidence was a copy of the receipt.

The landlord denied seeing a video of the tenant putting the keys in the mailbox.

Filed into evidence was a previous dispute resolution Decision involving the parties, dated September 29, 2020. However, this is not relevant as there were no findings made on the application, except to grant the landlord the filing fee, instructing the landlord to keep $100 from the tenant's security deposit.

Tenant's response –

The tenant submitted that on March 18, 2020, she had a move-in inspection with her original landlord, who informed the tenant that she was not the first tenant to have lived in the rental unit. The tenant submitted there was wall damage at the time of the move-in and referred to her photographs taken at the beginning of the tenancy and the end of the tenancy.

The tenant submitted her photographs both from the beginning of the tenancy and the end of the tenancy and show there was no damage and that the rental unit was left clean. The tenant submitted that her dog did not cause damage to the rental unit, as they were kenneled at all times when she was not able to directly supervise her dog. The tenant referred to photographs showing the dog kennel. Also filed in evidence were

videos of the rental unit taken by the tenant at the end of the tenancy and other photographs from the beginning and end of the tenancy.

The tenant submitted that she had the carpets cleaned and vacuumed and the vacuum marks on the carpet in the photographs show that the carpet was cleaned.

The tenant submitted that she requested the landlord inform her when the third party inspection would take place, as she had a right to be present during the inspection. The tenant said that she took off work to be present, but the landlord refused to allow her request or to provide a copy of the Report afterwards.

The tenant asserted that the landlord's photographs did not contain descriptions or time stamps, and that due to the black and white scanner, the photos were blurred. The tenant submitted that the receipt provided by the landlord only listed a company name, and no address. The tenant submitted the company is located in Seattle.

As to the locksmith charge, the tenant submitted that she had paid the monthly rent for September 2020, so therefore, she returned the key on September 30, 2020. The tenant submitted that she requested an inspection of the rental unit for September 30, 2020, and the request was denied. The tenant submitted that the landlord had instructed her not to communicate with him, and that is why she left the key in the mailbox.

Filed into evidence were emails from the tenant.

Tenant's application –

The tenant's monetary claim is $19,928.41, comprised of $10,000 for estimated aggravated damages, $5,000 for estimated loss of quiet enjoyment, $1,190.75 for moving expenses, $2,200 for the first month rent at her new rental unit, $1,100 for the security deposit at her new rental unit, $337.66 for a printer and ink, and $100 for the filing fee.

The tenant submitted that the case law filed in evidence provided the parameters of the range of damages. The tenant said that the landlord believed he could take advantage of a single female, by psychologically abusing her, which led to her continued suffering even now.

The tenant submitted that the landlord accused her of losing her key, when it was determined that her dog walker hid the key at the residence. The tenant submitted that the landlord took the key and then accused the tenant of putting the rental unit at risk. The tenant submitted that the landlord asked her dog walker inappropriate, personal questions and kept coming up to her for the next two weeks about the unlocked door.

The tenant submitted that the landlord initiated a text message exchange with the tenant requesting that she ensured the food delivery close the gate, which led to a number of text messages between the two. The tenant said that these text messages confirmed that the landlord was watching her and anyone coming into her rental unit, which caused her to become scared. The tenant submitted she felt threatened by the landlord's language, which instructed her to "govern yourself accordingly".

The tenant submitted she had become so concerned with the landlord's behaviour towards her, which led to her request her father to be in attendance for support when screens were being installed in the rental unit, on September 12, 2020, to which she had agreed to the access. At approximately 10:20 a.m. that day, the landlord came to the rental unit and began yelling at the tenant and her father because she was home and he could not do an inspection for that reason. The tenant submitted that when she asked the landlord to stop yelling, he went into a rage and called the police to have the tenant's father removed. The tenant said that the attending officer, the tenant's witness, attended and remained on the property until the screen work was completed. The tenant submitted that the officer attempted to mediate the differences between the parties, but the landlord accused the officer of being culturally insensitive.

The tenant submitted that she received an email from the landlord on September 20, 2020, in which the landlord said he witnessed her speaking to a police officer near her residence and accused her of colluding with the police department. The tenant submitted that the landlord informed her that she was not allowed to have uniformed members of the local police department at her residence and any business with the local police department must be done away from her residence. The tenant said that this was way beyond what a landlord is entitled to do.

The tenant submitted that the landlord had placed cameras on the residential property pointing at the tenant's rental unit, in order to monitor her activities, which resulted in a loss of her privacy. The tenant said that the landlord learned she was talking to the police officer as these cameras were used to spy on her.

The tenant submitted that these interactions caused her to be scared, as the landlord was spying on her, and also placed her job in jeopardy, as there was a potential conflict of interest due to the nature of her job. The tenant submitted that she works for a company answering emergency help phone-calls, which requires a high security clearance. According to the tenant, any hint that she has colluded with the police would be a reason for termination. This caused her additional stress.

The tenant submitted an email explaining that the police officer was unknown to her and was just someone who stopped to talk about her dog, as they also had a dog.

The tenant submitted that she felt an immediate imbalance of power after she asked for a copy of the tenancy agreement and the landlord said he would provide it later.

The tenant submitted that the landlord has acted aggressively towards her, often yelled at her and came into her rental unit unannounced.

The tenant submitted that the landlord video recorded her coming into her rental unit, with her dog, which caused her stress.

The tenant submitted that she had to vacate the property for her own safety, as the landlord's behaviour caused her to keep crying, impacting her mental health.

The tenant submitted she did not want to leave the rental unit, as it was close to work and she had been a good tenant.

Filed in evidence were copies of text messages between the parties, and the move-in condition inspection report taken with the original landlord.

Tenant's witness –

The tenant's witness was the police officer who attended the rental unit on September 12, 2020.

In response to the questions by the tenant to the witness, the witness said that he was not there to investigate a crime and did not find the tenant's behaviour unreasonable. The witness said he attended the rental unit at the call of the landlord, who appeared upset on that day. The witness said the landlord appeared intimidated by the tenant's father and that he explained to the landlord that the tenant was legally allowed guests in

her home. The witness said he informed the landlord that he was in no position to ask the tenant's father to leave.

The witness said the landlord did not listen to him, had an agenda, and was not helpful. The witness said that as he was leaving, the landlord confronted him. The witness said that he told the landlord that if the landlord prevented the tenant from getting her belongings from the garage, this would be in violation of the Criminal Code.

Landlord's response (by advocates) –

The advocate argued that the tenant failed to meet her burden of proof under Tenancy Policy Guideline 16 in that the landlord and tenant only had interaction when necessary. The advocate argued that the text message chain shows only a civil interaction between the parties that did not rise to the level of granting aggravated damages.

The advocate argued that the tenant failed to prove the second condition in awarding aggravated damages, which was foreseeability. Therefore, the landlord cannot be held responsible.

The advocate argued that the landlord placed cameras only for the common areas and the evidence does not indicate that this fact would contribute to mental distress. The advocate argued that the tenant was already under stress for other reasons. The advocate argued that there was no medical evidence of mental deterioration to support the tenant's claim and that the claim is unnecessarily high.

The advocate argued that the tenant's case here is distinguished from *Heckert v. 5470 Investments Ltd.*, 2008 BCSC 1298, submitted by the tenant, in that the camera location placed by the landlord in this instance was not intrusive.

The advocate argued that the tenant's claim for harassment was not sufficient as the landlord was acting on a legitimate purpose.

The advocate argued that the tenant failed to specifically break down her claim for moving expenses and additionally, the tenant was not entitled to moving costs as there was a mutual agreement to end the tenancy. The advocate argued that as the parties mutually agreed to end the tenancy, the tenant was not entitled to recover the costs of the monthly rent and security deposit for her new rental unit.

The tenant denied the parties mutually agreed to end the tenancy. The tenant asserted that the landlord placed the camera in a position to intrude on her privacy and that the landlord was not acting for a legitimate purpose when trying to control her private conversations.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is on the claiming party to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the claiming party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the claiming party did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's application –

Touch-up paint and repairs –

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

Under section 35(1) of the Act, a landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. I find the landlord failed to comply with the Act which was unreasonable especially when they had a third party conduct the inspection on their behalf.

While the landlord has provided photographs at the end of the tenancy, I do not find the damage above reasonable wear and tear. I find any damage is minor in nature and may not be listed on the move-in inspection as the move-in inspection was completed by a different owner and the standards of the new landlord or their agent may be higher.

Further, I find the invoice filed in evidence of $2,400 for the minor touch-up appears to be extremely high, no taxes were paid and paid in cash. Also, I note there is no contact information for the said company, which lead me to question the validity of the invoice.

I have reviewed the tenant's photographic and video evidence that the rental unit was left undamaged, accounting for any reasonable wear and tear.

I therefore **dismiss** the landlord's monetary claim of $2,400 for touch-up paint and repairs, without leave to reapply, due to insufficient evidence.

Locksmith charge –

The landlord denied receiving the key from the tenant. The tenant submitted a video of her returning the key to the rental unit by dropping it in the landlord's mailbox.

For this reason, I find the landlord submitted insufficient evidence, on a balance of probabilities, that the tenant failed to return the keys to the rental unit.

I therefore **dismiss** the landlord's claim for a locksmith charge, without leave to reapply, due to insufficient evidence.

Filing fee for a separate dispute resolution application –

In this case, the Decision of September 29, 2020, shows the landlord was entitled to keep $100 from the tenant's security deposit. I am uncertain why the landlord would be trying to reclaim this fee twice. Therefore, I **dismiss** this portion of their claim, without leave to reapply.

Tenant's application –

I have reviewed the tenant's evidence, which included case law references, and find the following, on a balance of probabilities.

Aggravated damages; loss of quiet enjoyment –

From my reading of the tenant's application, she has described the landlord's alleged behaviour for both her request for aggravated damages and for loss of quiet enjoyment.

Tenancy Policy Guideline 16 provides that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not straightforward.

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

The tenant has specifically requested the amount of $10,000 for aggravated damages in her application.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant alleged that the landlord has been extremely heavy-handed and psychologically abused her, forcing her to vacate her home.

In reviewing the evidence, one email from the landlord to the tenant, dated September 20, 2020, informed the tenant that a third-party witness brought to his attention that she was speaking with a police officer, which appeared to be off-premises, according to the tenant and the vague location in the landlord's email.

The landlord further told the tenant that her speaking to the police officer could be a conflict of interest in relation to her job. The landlord then specifically states, "*If this is true, I want to advise you that this is not acceptable and it may be against your code of conduct. If or should you have any personal relationships or interactions with any police officers, especially in uniform or when on duty, please be mindful and respectful of conducting this/your business off premises and away from my property to avoid any noise and disruptions to other tenants, your landlord and neighbours*".

In another email from the landlord to the tenant, dated September 12, 2020, the landlord informed the tenant that he was not comfortable with her father being on his property, (which in this case, was the tenant's home). The email further states that although guests are normally allowed, the tenant's father harassed him, which led to the police being called. The landlord told the tenant to "*govern yourself accordingly as a tenant and ask your father to do the same when he visits. I have always treated you and your father with civility and respect and I ask that you and him (as well as any other guests) to do the same"*.

As to the tenant's claim for aggravated damages, I find that there was insufficient and no medical evidence to support that the landlord caused the tenant to suffer any psychological or psychiatric harm which significantly affected her life. I would expect the tenant at the very least to have produced a doctor's report to substantiate her condition. While the landlord's email implies a threat to call her employer, there is no evidence to support that he did.

I find the tenant submitted insufficient evidence to support her claim for aggravated damages. I therefore **dismiss** the tenant's claim for aggravated damages, without leave to reapply, due to insufficient evidence.

As to the tenant's claim of loss of quiet enjoyment, I find the emails from the landlord to the tenant as described are troubling. I find a reasonable person would be disturbed by the nature and tone of the emails. I find the landlord intruded on the privacy of the tenant, by restricting, or attempting to restrict, her guests that were allowed to visit. The landlord had no right to caution the landlord about her guests.

Further, I find the landlord's underlying message in the email about the tenant possibly violating her employer's code of conduct, was a threat to her employment. I find a threat to one's livelihood to be egregious.

The landlord had no right to caution the tenant about who she speaks to or anything else regarding her personal life and certainly had no right to threaten the tenant's livelihood. I further found this email to be an intrusion on the tenant's right to privacy.

I also considered the testimony of the tenant's witness, who I found to be reasonable, clear, and consistent. The witness, a police officer, testified that the landlord was upset and confrontational that day.

As to the tenant's assertion that the camara placement violated her right to privacy, I find the tenant submitted insufficient evidence to support that the camera was only pointing in her direction.

In totality, I find this evidence substantiates that the landlord did intrude on the tenant's right to privacy and deprived the tenant of her right to be free from unreasonable disturbance.

I therefore find the landlord deprived the tenant of her right of quiet enjoyment and is entitled to compensation.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

> or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the evidence supports that the tenant was worried about the possible loss of her job and in having to deal with the landlord's heavy-handedness in attempting to restrict her father from visiting her. From the evidence submitted, I find the issues with the landlord began in September 2020 and the tenancy ended in September 2020.

In considering the amount of monetary compensation, I considered that the tenant had full use and occupation of the rental unit during that time period. Accordingly, I award the tenant monetary compensation for loss of quiet enjoyment, in the amount of **$725**, which is equal to 50% of monthly rent of $1,450 for September 2020.

Moving expenses –

As to the tenant's claim for moving expenses, these are choices the tenant made in ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenant was not required to move out by operation of the Act and I therefore **dismiss** her claim for $1,190.75, without leave to reapply, due to insufficient evidence.

1st month rent and security deposit for the tenant's new rental unit –

In an email of September 26, 2020, the tenant informed the landlord that she was not going to contest the dispute, which was the landlord's dispute resolution application for an expedited hearing for an order of possession of the rental unit. In that email, the tenant mentioned that she wanted the landlord to sign a mutual agreement to end the tenancy. The tenant filed in evidence a mutual agreement to end the tenancy, signed only by the tenant.

While this form was never signed by both parties, I find this evidence indicates that it was the tenant's choice to move from the rental unit.

As I have found that the tenant was not required to move out by operation of the Act and that it was her choice to move, I **dismiss** the tenant's claim of $2,200 for the first month's rent and $1,100 for the security deposit, without leave to reapply, due to insufficient evidence.

Printer and ink –

I find this claim is unrelated to tenancy matters. It was the tenant's choice to purchase a printer and ink, and find the tenant failed to prove a violation of the Act by the landlord.

I find I have no authority under the Act to award the tenant compensation for her choices, and **dismiss** her claim of $337.66, without leave to reapply.

Due to the tenant being partially successful with her application, I grant the tenant recovery of her filing fee of **$100**.

For the above reasons, I find the tenant has established a monetary claim on her application of **$825**, comprised of an award of $725 for loss of quiet enjoyment and $100 for recovery of the filing fee.

In addition, although the tenant provided her forwarding address to the landlord in an email by September 30, 2020, I find the tenant sufficiently served the landlord with her forwarding address, as the parties primary method of communication was emails and the landlord filed his application on October 1, 2020.

Both applications –

Under section 36(2) of the Act, the right of a landlord to claim against the security deposit or pet damage deposit, or both, for damage is extinguished if the landlord has not provided opportunities to inspect the rental unit at the end of the tenancy.

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, which in this case, it has not, 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 and pet damage deposit, pursuant to section 38(6) of the Act.

Section 38(7) provides that the pet damage deposit may only be used for damage caused by a pet of the residential property.

Tenancy Policy Guideline 17 states that a landlord who has lost the right to claim against the security deposit for damage to the rental unit, may still file a claim for other than damage to the rental unit. In this case, the landlord's claim also included a claim for a locksmith charge, not damage and therefore was entitled to claim against the security deposit.

I, however, find the landlord did not make a claim against the pet damage deposit for damage caused by the tenant's pet. As he extinguished his right to make a claim against the tenant's pet damage deposit, due to violation of section 36(2), I find the pet damage deposit must be doubled.

As I have dismissed the landlord's monetary claim against the tenant, pursuant to section 62(3) of the Act, I order the landlord to return the tenant's now-reduced security deposit of **$625**. I further order that the pet damage deposit of $725 must be doubled to **$1450** and returned to the tenant.

To give effect to this order, I include the amount of **$625** for the security deposit and the amount of **$1,450** for the doubled pet damage deposit with the tenant's monetary award of **$825**. I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount **$2,900**.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be 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 landlord's application is dismissed due to insufficient evidence, without leave to reapply. The landlord is ordered to return the tenant's now reduced security deposit of $625 and double the pet damage deposit of $1,450, immediately.

The tenant has been granted a monetary award of $2,900, as described herein. I have included the tenant's security deposit of $625 and pet damage deposit of $725 doubled,

plus the tenant's monetary award of $825 and granted the tenant a monetary order in the amount of $2,900.

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: October 27, 2021

Residential Tenancy Branch