Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDSP-DR, FFT

Introduction

This Application for Dispute Resolution was the subject of a Direct Request Proceeding on August 31, 2021. At the conclusion of that proceeding a Residential Tenancy Branch Adjudicator concluded that the Tenants were entitled to the return of double their pet damage deposit, in the amount of $4,000.00, plus the $100.00 filing fee paid to file this Application for Dispute Resolution.

The Landlord filed an Application for Review Consideration and on September 24, 2021 a Residential Tenancy Branch Arbitrator concluded that a new hearing should be convened to consider the Application for Dispute Resolution.

This participatory hearing was convened to consider the merits of the original Application for Dispute Resolution, in which the Tenants applied for the return of their pet damage deposit and to recover the fee for filing this Application for Dispute Resolution.

I find that the Landlord knew, or should have known, from information in the Application for Dispute Resolution that the Tenants were also seeking the return of double the security deposit, less the $2,000.00 security deposit that was refunded on July 19, 2021. In reaching this conclusion, I was influenced by the fact the Notice of Dispute Resolution Proceeding declares that the Tenants are “requesting the return of our pet deposit (2000$) as well as an additional 4000$ (double our deposits) as neither our pet or damage deposits were returned on time”. I will therefore be considering whether the Tenants are entitled to the return of double the security deposit, less the $2,000.00 that has been refunded.

The female Tenant stated that on August 13, 2021 the Direct Request Proceeding Package and evidence the Tenants submitted to the Residential Tenancy Branch on July 27, 2021 was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The Landlord stated that notice of the hearing on January 04, 2021 was sent to the female Tenant by email, although he cannot recall the date of service. He submitted no evidence to corroborate his testimony that hearing documents were sent by email.

The Tenant stated that the Landlord did not serve her with any documents related to the hearing on January 04, 2021. She stated that the Residential Tenancy Branch provided her with a copy of the review consideration decision and a courtesy copy of the notice of the January 04, 2021 hearing.

Both Tenants acknowledged that they understood the issues in dispute are limited to the issues outlined in their original Application for Dispute Resolution. The Tenants were advised the hearing could be adjourned if they needed more time to present evidence at these proceedings and they both agreed to proceed with the hearing today, even though they were not served with the notice of hearing by the Landlord.

On September 14, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that he does not recall if this evidence was served to the Tenants as evidence for these proceedings. He stated that regardless of whether this evidence was served to the Tenant as evidence for these proceedings, the Tenants have the evidence, which is a series of emails exchanged between the parties.

The female Tenant stated that the Landlord did not serve the Tenants with evidence for these proceedings.

As the Landlord cannot recall if his evidence was served to the Tenants and the Tenants do not acknowledge receiving the evidence, the Landlord's evidence was not accepted as evidence for these proceedings. Residential Tenancy Branch Rules of Procedure require parties to serve evidence to the other party, even if the other party has previously received a copy of the document. The purpose of this rule is to ensure the receiving party has time to consider the evidence being relied upon by the serving party.

The parties were advised that the Landlord may refer to his documentary evidence during the hearing, but I will not be considering the actual documents in my decision.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Tenants entitled to the return of their pet damage deposit and/or to double the amount of the pet damage deposit and security deposit they paid?

Background and Evidence:

The Landlord and the Tenants agree that:

- This tenancy began on June 15, 2020;
- Rent of $4,000.00 was due by the first day of each month;
- A security deposit of $2,000.00 was paid;
- A pet damage deposit of $2,000.00 was paid;
- The Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, which required them to vacate the rental unit by June 15, 2021;
- The rental unit was vacated on June 15, 2021;
- The Tenants did not pay rent for the period between May 16, 2021 and June 15, 2021;
- The Tenants paid rent for the period between May 01, 2021 and May 15, 2021;
- The Tenants provided the Landlord with a post dated rent cheque for April of 2021, which has never been cashed;
- On June 14, 2021 the Landlord received the forwarding address the Tenants provided, via email;
- On July 19, 2021 $2,000.00 was returned to the Tenants;
- the Tenants did not authorize the Landlord to retain any portion of the security/pet damage deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security/pet damage deposit.

The male Tenant stated that:

- the Landlord returned the Tenants' post dated rent cheques for May 01, 2021 and June 01, 2021;
- on July 19, 2021 the Tenants contacted the Landlord to request the return of their pet damage and security deposit;
- on July 19, 2021 the Landlord sent the Tenants a partial return of their deposits, in the amount of $2,000.00;
- on July 19, 2021 the Tenants informed the Landlord that the Landlord was required to return $4,000.00 in deposits;
- the Tenants did not realize the rent cheque for April had not been cashed until July 19, 2021, after they reviewed their bank records;
- on July 19, 2021 the male Tenant advised the Landlord that the rent cheque for April of 2021 had not been cashed, and he suggested that amount of rent (4,000.00) be deducted from the amount owing to the Tenants for the return of the deposits;
- on July 19, 2021 the Landlord responded to their email and advised them that not depositing the April rent cheque was "the full damage and pet deposit returned"; and
- they still owe $4,000.00 in rent for April and any financial compensation due to them as a result of these proceedings may be applied to that debt.

The Landlord stated that:

- He first told the Tenants that he would not be cashing the rent cheque for April of 2021 on July 22, 2021;
- When he told the Tenants that he would not be cashing that rent cheque, he informed them that he was not cashing the cheque in lieu of returning the security deposit and pet damage deposit;
- He has destroyed the April rent cheque; and
- He returned the $2,000.00 to the Tenants on July 19, 2021 in error, as he sent it before he realized that he had not cashed the April rent cheque.

Analysis:

On the basis of the undisputed evidence, I find that this tenancy began on June 15, 2020; that the Tenants agreed to pay monthly rent of $4,000.00 by the first day of each month; that the Tenants paid a security deposit of $2,000.00; and that the Tenants paid a pet damage deposit of $2,000.00.

On the basis of the undisputed evidence, I find that the Landlord served the Tenants

with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Residential Tenancy Act (Act*), which required them to vacate the rental unit by June 15, 2021 and that the Tenants did vacate the rental unit by June 15, 2021.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenants were served with notice to end the tenancy pursuant to section 49 of the *Act*, I find that they were entitled to the equivalent of one month's rent. As the Tenants did not pay rent for the period between May 16, 2021 and June 15, 2021, I find they have received the compensation due to them, pursuant to section 51(1) of the *Act*.

Although compensation pursuant to section 51(1) of the *Act* is not the subject of these proceedings, this compensation is referenced only to ensure it is not confused with an attempt to return the security/pet damage deposit.

On the basis of the undisputed evidence, I find that the Tenants provided the Landlord a forwarding address, in writing, when it was emailed to him on June 14, 2021.

In determining that the Landlord received the Tenant's forwarding address on June 14, 2021, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostatting, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents may be served.

Section 43(1) of the *Residential Tenancy Regulation* stipulates that documents described in section 88 of the *Act* may, for the purposes of section 88(j) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

Regardless of whether the forwarding address was served pursuant to section 88(j) of the *Act*, the Landlord acknowledged receiving the Tenants' forwarding address on June 14, 2021. I therefore find it was sufficiently served to the Landlord on June 14, 2021, pursuant to section 71(2)(b) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on June 15, 2021 and the Landlord received the Tenants' forwarding address on June 14, 2021, I find that the Landlord had until June 30, 2021 to either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

There is no evidence to establish that the Landlord filed an Application for Dispute Resolution claiming against the security/pet damage deposits.

On the basis of the undisputed evidence, I find that the Tenants provided the Landlord with a post-dated cheque for rent for April of 2021, in the amount of $4,000.00, which the Landlord inadvertently neglected to cash.

On the basis of the testimony of the male Tenant, which is supported by email evidence dated July 19, 2021, I find that the Landlord first told the Tenants that he would not cash their April rent cheque of $4,000.00 in lieu of returning their $2,000.00 pet damage deposit and $2,000.00 security deposit. I therefore find that the Tenants' security deposit and pet damage deposit was returned, in full, on July 19, 2021.

I cannot conclude that the security deposit and pet damage deposit were returned prior to July 19, 2021, because the Tenants were not informed that their April rent cheque would not be cashed until July 19, 2021. As such, they had an obligation to leave that money in their account in the event the Landlord elected to withdraw that rent payment. In the event the Landlord wished to return the Tenants' security/pet damage deposit by

not cashing the April rent cheque, I find that he was obligated to inform the Tenants of that decision within fifteen days of the end of the tenancy and the date he received the Tenants' forwarding address, which was June 30, 2021.

While I accept the Landlord had not taken steps to collect the rent for April by June 30, 2021, I cannot conclude that he did so because he believed he was returning the pet damage/security deposit. In reaching this conclusion I was heavily influenced by the testimony of the male Tenant, who stated the he informed the Landlord that the rent cheque for April of 2021 had not been cashed. This testimony is corroborated by the emails exchanged on July 19, 2021. I find that the Landlord was not previously aware he had not cashed the April rent cheque, he could not have been relying on that as a method of repaying the security/pet damage deposit by June 30, 2021.

In concluding that the Landlord was not aware he had failed to cash the April rent cheque until July 19, 2021, I was influenced by the Landlord's testimony that he returned $2,000.00 of the pet damage/security deposits to the Tenants on July 19, 2021 before he realized, later that day, that he had not cashed the April rent cheque.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act* by returning the deposits or filing an Application for Dispute Resolution claiming against the deposits by June 30, 2021, I find that the Landlord must pay the Tenants double the security deposit and pet damage deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $4,100.00, which represents double the security deposit of $2,000.00, double the pet damage deposit of $2,000.00 and $100.00 as compensation for the cost of filing this Application for Dispute Resolution.

As the Landlord paid $2,000.00 to the Tenants on July 19, 2021, that payment should be applied to the monetary claim, leaving $2,100.00 due to the Tenants. I therefore grant the Tenants a monetary Oder for $2,100.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision and monetary Order replace the decision and monetary Order dated August 31, 2021. The monetary Order dated August 31, 2021 has no force or effect.

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: January 04, 2022

Residential Tenancy Branch