Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH BEACH ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSDS-DR FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for the return of their security deposit of $1,750.00, for a monetary claim of $1,122.46 for the return of personal items, plus the recovery of the cost of the filing fee through the Direct Request process. On August 26, 2021, an adjudicator wrote an Interim Decision, adjourning this matter to a participatory hearing due issues related to the Direct Request application. The August 26, 2021 Interim Decision should be read in conjunction with this decision.

On February 24, 2022, the participatory hearing was held and the tenant and an agent for the corporate landlord, AK (agent) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence, if the party submitted documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding documentary evidence.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously

made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Additionally, the agent was removed as a respondent in this application pursuant to section 64(3)(c) of the Act, leaving the corporate landlord as the only respondent.

The tenant's application related to $1,122.46 for the return of personal items was being refused, pursuant to section 59(5)(c) of the Act because their application for dispute resolution did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act. For example, the tenant neglected to submit a Monetary Order Worksheet and as such, provided no specific amounts or breakdown of how they arrived at the amount claimed for personal items and what it was comprised of. I find that proceeding with that portion of the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of particulars that set out how the tenant arrived at the amount of $1,122.46 makes it difficult, if not impossible, for the landlord to adequately prepare a response to that portion of the tenant's claim.

The tenant is at liberty to reapply for a monetary claim related to the return of their personal items; however, are reminded to provide a detailed breakdown of their monetary claim and are encouraged to use the Monetary Order Worksheet (RTB-37) available at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-by-number when submitting a monetary claim. The applicant may include any additional pages to set out the details of their dispute in their application, as required.

Issues to be Decided

- Does the Act apply to this tenancy?
- If yes, is the tenant entitled to the return of their security deposit under the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

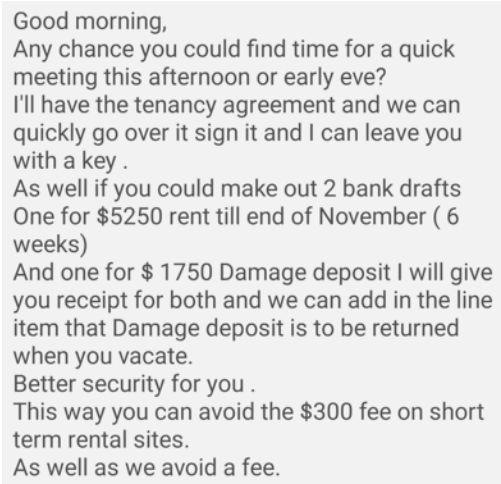
Jurisdiction

The agent claims the Act does not apply to the living arrangement as the landlord intended for this to be a vacation rental. The parties confirmed that there was no written tenancy agreement and as a result, I asked both parties questions related to the living arrangement.

The parties confirmed the following:

1. The applicant moved into the unit on October 15, 2020.
2. The applicant did not vacate the unit until March 31, 2021.
3. The applicant paid a security deposit (called a damage deposit by the agent) in the amount of $1,750.00 at the start of the living arrangement.
4. The applicant did not share a kitchen or bathroom with the owner of the property.
5. The applicant stated that rent of $3,500.00 was paid on the first of each month.
6. The respondent claims that money was paid weekly at $875.00 per week; however, no documentary evidence was presented to support that $875.00 was paid weekly.
7. The parties agreed the unit was listed on VRBO; however, the applicant states they contacted the listing party and requested a tenancy, which the applicant stated was formed by providing a security deposit/damage deposit.

In addition, the applicant presented the following text from the respondent, which states in part the following:


Good morning,
Any chance you could find time for a quick meeting this afternoon or early eve?
I'll have the tenancy agreement and we can quickly go over it sign it and I can leave you with a key .
As well if you could make out 2 bank drafts
One for $5250 rent till end of November (6 weeks)
And one for $ 1750 Damage deposit I will give you receipt for both and we can add in the line item that Damage deposit is to be returned when you vacate.
Better security for you .
This way you can avoid the $300 fee on short term rental sites.
As well as we avoid a fee.

In addition, the parties confirmed there was no written vacation rental agreement between the parties before me. Therefore, I find that in the text above, the respondent refers to a "tenancy agreement" and not a vacation rental agreement. I also find that the respondent requested a "damage deposit" which under the Act is called a security deposit. I further find that the respondent stated they could avoid a $300.00 fee on short term rental sites.

Given the above, the parties were advised that I found a tenancy agreement existed between the parties. I find that section 12 of the Act applies and states:

> **Tenancy agreements include the standard terms**
>
> **12** The standard terms are terms of every tenancy agreement
>
> (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
>
> (b) **whether or not the tenancy agreement is in writing.**

Considering the above, I find the parties had a verbal tenancy agreement and that this was not a vacation rental as I find that a security deposit was paid by the applicant, which I will now call the tenant for the remainder of this decision. I will also refer to the respondent as landlord for the remainder of this decision as I find a tenancy was formed and that this was not a short-term vacation rental as the tenancy lasted between October 15, 2020 and March 31, 2021. Therefore, I find the Act applies to this tenancy. I also find that section 5 of the Act applies and states:

> **This Act cannot be avoided**
>
> **5**(1) **Landlords and tenants may not avoid or contract out of this Act or the regulations.**
>
> (2) **Any attempt to avoid or contract out of this Act or the regulations is of no effect.**
>
> [emphasis added]

Given the above, I disagree with the agent who claims that this was a vacation rental as I find the text and the actions of the parties created a verbal tenancy agreement, which is enforceable under the Act. Therefore, I find I have jurisdiction to hear this dispute. Given the above, the hearing continued.

Background and Evidence

As noted above, there was no written tenancy agreement; however, a verbal tenancy agreement was formed and began on October 15, 2020. I find that monthly rent was $3,500.00 per month and was due on the first day of each month. The tenant paid a security deposit of $1,750.00, which the landlord continues to hold.

The agent confirmed that money was paid via e-transfer by the tenant directly to the agent. The agent confirmed that on July 1, 2021, the agent received a text from the tenant, which provided the tenant's forwarding address. The agent also confirmed that they did not have written permission from the tenant to retain any portion of the $1,750.00 security deposit.

In addition to the above, the agent confirmed that they did not return any amount of the $1,750.00 security deposit since July 1, 2021, nor has the landlord filed a claim towards the tenant' security deposit. The tenant did not waive their right to double the return of the security deposit during the hearing. The tenant vacated the unit on March 31, 2021.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

> **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.
>
> (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.**
> [emphasis added]

The agent confirmed that the landlord did not claim against the tenant's $1,750.00 security deposit and has not returned any portion of the security deposit. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposits from the **later** of the end of tenancy or the written forwarding address. I find in the matter before me, as the written forwarding address was received by the landlord via text on July 1, 2021 and the end of tenancy date was March 31, 2021, I find the later date is July 1, 2021. Therefore, I find the landlord had until July 16, 2021 to return the tenant's security deposit, which the landlord failed to do.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their $1,750.00 security deposit for a total of $3,500.00. I note that the security deposit has accrued $0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above.

As the tenant paid a filing fee of $100.00 and their application was successful, I grant the tenant **$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **$3,600.00**, comprised of $3,500.00 for the doubling of the combined deposits, plus the $100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of $3,600.00.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of $3,600.00 as indicated above.

The landlord has been cautioned to comply with section 38(1) of the Act in the future. This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. Should the tenant require enforcement of this

order, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is cautioned that they can be held liable for all costs related to enforcing the monetary order under the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 2, 2022

Residential Tenancy Branch