



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlords to return the security and pet damage deposits (the deposits), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants DJ (the tenant) and SS and landlords KG (the landlord) and JG attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlords to return the deposits?

2. a monetary order for compensation for damage or loss under?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on May 01, 2021 and ended on September 27, 2021.

The landlord confirmed receipt of the tenants' forwarding address via text message on September 27, 2021. The tenants affirmed they no longer live at the forwarding address. The tenants' current address is recorded on the cover page of this decision.

The February 27, 2021 tenancy agreement signed by both parties was submitted into evidence. It indicates the tenancy was from May 01, 2021 to April 30, 2021 and monthly rent of \$1,350.00 was due on the first day of the month. Both parties stated the end date agreed was April 30, 2022.

Both parties agreed the tenants paid on February 27, 2021 \$1,350.00 for rent due on May 01, 2021, \$1,350.00 for rent due on the last month of the tenancy, \$675.00 for the security deposit and \$500.00 for the pet damage deposit. The landlord received the total amount of \$3,850.00.

The tenant testified that in April 2021 the parties verbally agreed to terminate the tenancy on September 30, 2021, to allow a third pet in the rental unit and to increase monthly rent to \$1,850.00. The tenants accepted the rent increase because of the shorter term tenancy and because of the extra pet. The tenant said he agreed to the April 04, 2021 text message sent by the landlord:

We talked about it and because summer is prime time for us and we would be able to offer it to you for 1850 a month and we could do month to month from there, with one month's notice to leave. We understand your situation and totally get it. We had requests for the month of may and declined them for you guys. If you decide to move on we would give you back first, last and half of your damage deposit. We feel that

that's fair. Please let us know by the end of the week, so we can make the basement available again if you're not taking it.

The landlord did not dispute the tenant's testimony about the new terms of the tenancy agreement.

The tenant paid in April 2021 the total amount of \$1,500.00 to complete the rent due on the first and last months of the tenancy and the deposits. The tenant affirmed the total amounts the landlord received were: \$1,850.00 for rent due on May 01, 2021, \$1,850.00 for rent due on the last month of the tenancy, \$925.00 for the security deposit and \$750.00 for the pet damage deposit.

The landlord stated he received \$1,400.00 in April 2021 for the new amounts agreed. The landlord confirmed receipt of \$1,850.00 for April 2021 rent, \$1,850.00 for the last month's rent, \$925.00 for the security deposit and \$650.00 for the pet damage deposit. The landlord did not receive the balance of \$100.00 for the new pet damage deposit.

On June 01 or 02, 2021 the parties agreed to reduce monthly rent to \$1,700.00 effective on June 01, 2021 and the amount received for the rent due on the last month of the tenancy was used for the rent due on June 01, 2021.

The tenant paid rent on July 01, 2021 in the amount of \$1,325.00, as the amount of \$375.00 from the security deposit was applied for the rent due on July 01, 2021. The total amount paid for rent due on July 01, 2021 was \$1,700.00. The tenant paid monthly rent of \$1,700.00 in August and in September 2021.

Both parties agreed the landlords returned \$635.00 from the security deposit and \$250.00 from the pet damage deposit on October 04, 2021. The landlords retained \$40.00 from the security deposit and \$250.00 from the pet damage deposit.

The tenants did not authorize the landlords to retain the deposits.

The parties inspected the rental unit when the tenancy ended but did not complete a move out inspection report.

The tenants are claiming the return of the deposits in the amount of \$290.00. The tenants submitted a monetary order worksheet into evidence. It states: "Pet and security deposits: \$290.00"

The landlord submitted a ledger into evidence:

2021.02.27: Initial rental agreement balance: first, last and damage and pet deposit due: \$5,375.00
2021.02.27: \$3,875.00 received.
2021.04.20: \$1,500.00 owing due on May 01st based on changes to \$1,850.00 for May's rent and additional pet
2021.05.21: Received \$1,400.00. \$100.00 outstanding balance.
2021.05.24: One pet removed \$250.00 refunded - \$150.00 credit.
2021.06.01: Adjust rent to \$1,700.00 per month, credit back \$75.00 of initial deposit (based on new half month's rent), applied last month's rent received with original rental agreement based on original amount \$1,850.00-\$375.00 credit.
2021.07.01: \$1,700.00 rent due, \$375.00 credit. \$1,325.00 owing due July 01, 2021.
2021.08.01: \$1,700.00 rent due.
2021.09.01: \$1,700.00 rent due.

Both parties testified they do not dispute the amounts mentioned during the hearing, in the ledger and monetary order worksheet submitted into evidence.

The tenants are claiming the total amount of \$1,900.00 for the rent increase. The tenants are claiming \$500.00 for May 2021 and \$350.00 per month from June to September 2021.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement
(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Amount of rent and the deposits

The parties did not dispute the amounts during the hearing and did not dispute the information in the monetary order worksheet: "The tenants submitted a monetary order worksheet into evidence. It states: 'Pet and security deposits: \$290.00'." The landlords did not dispute that the tenants paid rent in the amount of \$1,850.00 in May 2021, and \$1,700.00 from June to September 2021.

Based on the testimony offered by both parties, the monetary order worksheet and the ledger, and the April 04, 2021 text message, in the context presented, I find the parties agreed to pay monthly rent and the tenants paid rent in the amounts of \$1,850.00 in May 2021 and \$1,700.00 from June to September 2021.

I also find that at the end of the tenancy the landlords held a security deposit of \$675.00 and a pet damage deposit of \$500.00.

Move out inspection

I accepted the uncontested testimony that the landlords did not complete a move out inspection report.

Section 35 of the Act states:

- (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. requires the landlord to offer the tenant at least 2 opportunities for the move out inspection and to complete the report in accordance with the regulations.

I find the landlords did not comply with section 35(3) and (4) of the Act, as they did not complete a move out inspection report.

Section 36(2) of the Act states:

- Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [2 opportunities for inspection],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Policy Guideline 17 explains: “7. The right of a landlord to obtain the tenant’s consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.”

Thus, the landlords extinguished their right to claim against the deposits, per section 36(2)(c) of the Act.

Return of the deposits

Section 38(1) of the Act requires the landlord to either return the deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant’s forwarding address in writing.

I accept the uncontested testimony that the landlords received the tenants’ forwarding address in writing on September 27, 2021. The landlords returned \$635.00 from the

security deposit and \$250.00 from the pet damage deposit on October 04, 2021. The landlords retained \$40.00 from the security deposit and \$250.00 from the pet damage deposit.

The landlord can only retain the deposit if the Residential Tenancy Branch or the tenant authorizes the landlord to do so.

Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

- (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.

Residential Tenancy Branch (RTB) Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[...]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[...]

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;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to double the deposits.

RTB Policy Guideline 17 states:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Thus, I find the tenants are entitled to \$1,465.00 (\$675.00 security deposit + \$500.00 pet deposit = \$1,175.00 $\times 2 = \$2,350.00$ subtracted \$885.00 returned).

Over the period of this tenancy, no interest is payable on the landlords' retention of the deposits.

Rent Increase

Section 43(1) and (2) of the Act states:

(1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

Regulation 22(1) and (3) states:

(1) In this section, "inflation rate" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

[...]

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows: percentage amount = inflation rate.

Based on the testimony offered by both parties and the April 04, 2021 text message, I find the tenants agreed to a rent increase because they changed two clauses of the tenancy: the end term was September 30, 2021 instead of April 30, 2022 and the landlord authorized the tenants to have a third pet.

I find the rent increase complied with section 43(1)(c) of the Act. I dismiss the tenants' claim for a monetary order.

Section 43.1 of the Act states:

(2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

Per section 43.1 of the Act, landlords could not increase rent under section 43(1)(a) of the Act from March 31, 2020 and December 31, 2021. The Act did not restrict a rent increase under section 43(1)(c) of the Act.

Filing fee and summary

As the tenants were partially successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee.

In summary, the tenants are entitled to \$1,565.00.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,565.00. This order must be served on the landlords by the tenants. If the

landlords fail to comply with this order, the tenants may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: June 06, 2022

Residential Tenancy Branch