



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Pivotal West Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord's agents JP and JK appeared. Tenant AB along with advocate LG appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated that they did not receive the tenant's dispute notice and evidence package. The tenants stated that they served the landlord at three separate locations by registered mail. One was the landlord's address listed on the tenancy agreement, one was the landlord's agent's address, and one was a construction company which appears to be owned by the landlord's agent. The tenants provided three tracking numbers in evidence with the names of the individuals handwritten on each tracking number slip. The tenant also provided a Canada Post receipt in evidence dated December 10, 2022. I find that the landlord was properly served with the tenants' dispute package at the landlord's address for service listed on the tenancy agreement based on sections 88, 89, and 90 of the Act.

The landlord stated that they did not serve their evidence package for the hearing on the tenants. They stated that all the evidence upon which they were relying was already in possession of the tenant. RTB Rules of Procedure Rule 3.17 requires that the respondent serve their evidence package on the applicant not less than 7 days prior to the hearing. Based on Rule 3.17 I will not consider the landlord's documentary evidence.

Preliminary Issue

The landlord's name was spelled incorrectly, as was the address of the rental unit. Pursuant to section 64(3)(c) the dispute application is amended to reflect the correct name of the landlord and address of the rental unit.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation?
2. Are the tenants entitled to a monetary order for the return of security or pet deposits?
3. Are the tenants entitled to the return of the security deposit?

Background and Evidence

The tenancy commenced February 1, 2022 on a month to month basis. Rent was \$2,250.00 per month due on the first of the month. The landlords still hold a security deposit of \$1,125.00 and a pet deposit of \$1,125.00. The tenancy ended July 31, 2022.

The parties agreed on the following facts:

- No move in condition inspection was completed with the landlord and tenants
- No move out condition inspection was completed with the landlord and tenants
- The tenants did not agree in writing to allow the landlord to withhold part or all of the security and pet deposits
- The landlord has not filed an application for dispute resolution with respect to the security and pet deposits

Tenants' Evidence

The tenants testified that they provided the landlord with their forwarding address by registered mail sent on October 20, 2022. The tenants provided a Canada Post receipt and a tracking number in evidence as proof of service.

The tenants testified that they were not offered any opportunity to participate in a move out inspection.

Landlord's Evidence

The landlord testified that they did not receive the registered mail package with the tenants' forwarding address. The landlord also testified that they received a document with an address from the tenants, but it wasn't clear to the landlord that the address was the tenants' forwarding address.

The landlord stated that there was a supplemental agreement that was an addendum to the tenancy agreement. The supplemental agreement was signed by the landlord but not by the tenants. The supplemental agreement is referred to in the tenancy agreement. The landlord read the entirety of the supplemental agreement and a portion of the agreement required the tenants to repair drywall damage and repaint the rental unit at the end of the tenancy.

The landlord read an email that was sent to the tenants regarding a move out inspection. The email stated that the landlord wished to set up a time with the tenants to do a walk through near the end of August.

Analysis

RTB Rules of Procedure 6.6 states, "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 their case is on the person making the claim. In this case the onus is on the tenants.

The landlord did not satisfy the requirements of either section 23 or 35 of the Act, which is necessary to make a claim to retain part or all of the security and pet damage deposits. Further, based on the evidence of the tenants including the evidence of proof of service of the tenants' forwarding address, I find that the tenants sent the landlord their forwarding address on October 20, 2022. The landlord's evidence on whether the forwarding address was received was vague and contradictory.

Under section 38(1) of the Act, the landlord had 15 days from the date they received the tenants' forwarding address to either return the security and pet deposits or to file a claim to retain all or a portion of them. The landlord did neither. Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act, they must return double the amount of the security and pet deposits to the tenants.

I find that the landlord did not comply with section 38(1) of the Act and did not return the security and pet deposits or file a claim to retain them within 15 days of October 20, 2022. The tenants' application is granted. The tenants are entitled to the return of double the amount of the security and pet damage deposits.

The tenants made a further claim for compensation for damages pursuant to section 67 of the Act. The tenants clarified in the hearing that this claim was largely duplicative of the claim for the return of the security and pet deposits and is therefore dismissed.

As the tenants were successful in their application, they are entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenants are granted a monetary order as follows:

Claim	Amount
Security and pet deposit (double)	\$4,500.00
Filing Fee	\$100.00
Total	\$4,600.00

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: May 1, 2023

Residential Tenancy Branch