



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Compensation in the amount of \$1,975.00 for personal property of the tenants that is missing from the rental unit [the 'Compensation Claim'].
2. Payment of double the amount of the tenants' security deposit [the 'Deposit'].

The landlords appeared at the hearing on 5 June 2023, along with an advocate. The tenants also appeared along with an advocate of their own.

Issues to be Decided

Are the landlords liable to the tenants for personal property missing from the rental unit?

Must the landlords pay the tenants double the amount of their Deposit?

Background and Evidence

The parties could not tell me precisely when this tenancy began... sometime in 2014 or 2015. On moving in, the tenants paid \$382.00 to the landlords as a Deposit.

Then, about a year ago, the tenants were hospitalised and comatose.

While hospitalised, the tenants were not paying rent. The landlords could not locate the tenants to discuss this with them. Finally, the landlords contacted police, who informed them that the tenants were in hospital.

The landlords spoke with hospital staff, who told them that the tenants would not be returning to the rental unit.

At some point during this ordeal, a social worker spoke with the tenants and told them that the tenants' things from their rental unit had been stored. The tenants recalled the social worker telling them, 'Don't worry... we have a storage locker for your belongings.'

The landlords told me that while the tenants were hospitalised, hospital staff came to the unit and removed the tenants' things.

When the tenants were ultimately discharged from hospital, they were able to recover some of their belongings. But others, including potted plants, some furniture and window blinds, were not recovered [the 'Missing Property']. The tenants estimate that this Missing Property is worth \$1,975.00. When I asked them if they had receipts for this Missing Property, they said that they did, but the receipts were kept in the rental unit and are also now gone. They did submit some photo's of the rental unit when they lived there, showing a variety of furnishings.

The tenants want the landlords to compensate them for the Missing Property, and want their Deposit to be returned. They did not contact the landlords about the Missing Property and Deposit until they filed this application.

Upon filing this application, the tenants received from the RTB a Notice of Hearing. This notice recorded the tenants' complete mailing address and phone number twice. The tenants mailed this notice on the landlords on 19 April.

The landlords told me that they decided to keep the Deposit because of rent that the tenants failed to pay.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

Are the landlords liable to the tenants for the Missing Property?

An applicant bears the burden of proving his or her case on a balance of probabilities.

In this instance, have the tenants proved that the Missing Property is probably missing because of actions that the landlords took? If so, then have the tenants proved that the value of the Missing Property is probably \$1,975.00?

I answer 'no' to both questions.

The landlords deny having anything to do with disposing of the tenants' property from the rental unit. And the tenants' assertion is, in essence, that because they did not find their Missing Property when they came out of hospital, the landlords are responsible for the Missing Property. Other than that assertion, there is nothing to indicate that the cause of the property going missing is the landlords.

The tenants told me that a social worker told them that 'we' had moved their things into storage: it is more probable that whoever 'we' is knows what became of the Missing Property. There is nothing to indicate that 'we' is the landlords.

Even if it were, the tenants have not proved that the Missing Property is worth \$1,975.00. This number comes from the tenants' guessing at the value of items depicted in photo's of the rental unit when they still lived there. Such guesses, without some kind of corroboration, are insufficient to prove value. I don't accept that the Missing property is probably worth \$1,975.00.

Must the landlords pay the tenants double the amount of the Deposit?

In analysing this issue, I rely upon 'Residential Tenancy Policy Guideline 17: Security Deposit and Set off'. This guideline reads (in part):

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.

Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

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;

...

- whether or not the landlord may have a valid monetary claim

The landlords in this dispute did not file an application to the RTB to retain the Deposit. The landlords told me merely that they decided to keep the Deposit because of unpaid rent that the tenants owed. This unilateral decision of theirs does not form a basis under the Act to refuse to return a security deposit. They may have a valid claim against the Deposit, but they must apply to the RTB to advance that claim.

In the meantime, the tenants are entitled to the return of their Deposit, and I will accordingly order it returned, along with \$3.70 interest, representing 1.95% interest from 1 January 2023 to 30 June 2023.

The tenants argue that they are entitled to have the landlords pay them double the amount of the Deposit.

I find that the landlords had notice of a forwarding address of tenant by virtue of the Notice of Hearing, posted 19 April. But as the landlords still did not return the Deposit, I find that they must pay double the Deposit. This equates to \$767.70 [\$382.00+\$3.70+\$382.00].

Conclusion

I dismiss the Compensation Claim with leave to re-apply. But this leave does not extend the limitation period in which to a claim, as dictated by section 60 of the Act.

I order that the landlords pay to the tenants \$767.70 *per* section 38 (6) of the Act.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 30 June 2023

Residential Tenancy Branch