



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

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 for a \$1,807.00-overpayment in rent [the 'Overpayment'].
2. Return of a \$1,250.00 security deposit [the 'Deposit'].
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 21 July 2023. The tenants also appeared by way of an agent.

Issues to be Decided

Are the tenants owed the Overpayment?

Must the landlords return the Deposit?

Background and Evidence

The tenants lived in this rental unit for over 10 years. On moving in, they had paid the Deposit to the landlords.

On 4 March, the tenants came back to the unit from working away, and discovered that the unit had been ransacked.

The parties agree that the tenants had paid \$2,000.00 for March rent on 1 March, out of a total owing of \$2,600.00.

The parties also agree that the unit was damaged beyond repair and uninhabitable, and that the tenants were not responsible for the damage.

The tenants told me that they sent their forwarding address to the landlords on 13 March, and the landlords deny having ever received it.

RTB records show that an address for service for the tenants was included in the Notice of Dispute Resolution Proceeding, which the tenants sent to the landlords on or about 8 May.

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.

The tenants say that the landlords should repay \$1,807.00 of the March rent as an Overpayment, representing the \$2,000.00 that were paid, less the first three days of occupancy, from 1 to 3 March.

The landlords say that they should keep all of the rent from March because it was the responsibility of the tenants to secure the unit, and if someone broke in and destroyed the unit, then it is not a problem for the landlords: the tenants were still obliged to pay rent for all of March.

The tenants also say that their Deposit should be returned. While the landlords acknowledge that they have not applied to the RTB to keep the Deposit, they should still be permitted to keep it because of all the damage to the unit.

Are the tenants owed the Overpayment?

The essence of the tenants' position on the Overpayment is that because the rental unit was destroyed through no fault of their own, the tenancy agreement was frustrated. In

other words, the agreement effectively came to an end with the ransacking of the unit, and so the tenants were not obliged to pay rent for the remainder of March.

So, did the destruction of the unit frustrate the tenancy agreement?

Section 1 of the *Residential Tenancy Act* [the 'Act'] defines 'tenancy agreement' (in part) as, 'an agreement... between a landlord and a tenant respecting possession of a rental unit...'. The key to analysing frustration in this case is 'possession'.

About ten years ago, the Supreme Court of British Columbia considered the definition of 'possession' in the context of realty [see paragraph 15 of *Yazdi Integrated Health Group Ltd. v. Unihealth Management Ltd.*, 2014 BCSC 332]. The court referenced the following definition of 'possession': '[I]nasmuch as the use of property cannot be had without possession, the term possession is frequently used as implying use and enjoyment...'

Applying these definitions (from both the Act and the Supreme Court), I rephrase the question as, 'How did the ransacking of the unit impact the agreement between the tenants and the landlords respecting the tenants' use and enjoyment of the unit?'

The landlords' own evidence was that, as a result of the ransacking, the unit was unliveable. This tells me that after the ransacking, it was impossible for the tenants to use and enjoy the unit that they had agreed to rent from the landlords.

And so I accept the frustration argument, and find that the tenancy agreement came to an end no later than 4 March. I find that, with rent being \$2,600.00 *per* month, and there being 31 days in March, the *per diem* amount of rent owed is \$83.87. This means that the tenants owed \$251.61 for March rent, pro rated for the first three days of March. Subtracting this amount from the \$2,000.00 that the tenants did pay toward March rent, leaves \$1,748.39 as the Overpayment.

Must the landlords return the Deposit?

Section 38 (1) of the Act is clear: a landlord must repay a security deposit after a tenancy, or must apply to the RTB to keep it. The landlords in this case have done neither.

There is some dispute about whether the landlords received the forwarding address sent on 13 March. In any event, I am satisfied that the landlords received a forwarding address for the tenants by virtue of the Notice of Dispute Resolution Proceeding. Despite this, the landlords have still refused to return the Deposit.

Section 38 (6) of the Act requires me, therefore, to order that the landlords return double the Deposit, in the amount of \$2,500.00.

And because the tenants have succeeded in their application, I also order that the landlords reimburse them for the cost of filing their application.

Conclusion

I order that the landlords pay to the tenants \$4,348.39 (\$2,500 for the Deposit and penalty, plus \$1,748.39 for the Overpayment, plus the \$100.00 filing fee).

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: 9 August 2023

Residential Tenancy Branch