



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the tenants: MNSD, FFT

For the Landlords: MNRL-S, MNDL-S, LRSD, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- an order for the landlord to return the security and pet damage deposits (the deposits), pursuant to section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

The landlords' application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Residential Tenancy Regulation or tenancy agreement, under section 67;
- an authorization to retain the deposits under Section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

Tenant CH and landlords BS and SS attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant's application lists tenant CW and respondent landlord BS. The landlords' application lists landlords BS and SS and respondents tenants CW and SH.

Both parties agreed the tenants were CW and SH and the landlords were BS and SS.

Hereinafter I will refer to tenant CW as the Tenant and landlord BS as the Landlord.

Service of the Tenant's application

The Landlord confirmed receipt of the notice of hearing and evidence and that he had enough time to review these documents.

Based on the Landlord's convincing testimony, I find the Tenant served the notice of hearing and evidence in accordance with section 89 of the Act.

The notice of hearing states the only claims are an order for the return of the deposits and the filing fee.

The Tenant affirmed she is also seeking an order for losses related to the payment of utilities bills.

The Tenant did not mention in the application that she is seeking an order for losses related to the payment of utilities bills. The Tenant is at liberty to submit a new application for losses related to the payment of utilities bills.

Service of the Landlord's application

The Landlord stated he registered mailed the notice of hearing and the evidence to tenant SH on July 27, 2023. The tracking number and address are recorded on the cover page of this decision.

Both parties agreed that the Tenant texted the Landlord SH's address on July 13, 2023.

The Landlord received an authorization for substitute service for the Tenant on July 25, 2023. It states:

For this reason, I allow the Landlords substituted service of the Notice by e-mail to Tenant C.W.'s e-mail address listed on the second page of this decision.

I order the Landlords to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the Landlords have served Tenant C.W. in accordance with this order. If possible, the Landlords should provide a read receipt confirming the e-mail was opened and viewed by Tenant C.W.

The Landlord submitted into evidence 5 emails sent to the Tenant on July 27, 2023. They indicate the Landlord served the notice of hearing and photographs.

The Tenant testified she only received the notice of hearing and photographs.

The Landlord said he emailed the Tenant the invoices, receipts and two monetary order worksheets listing 15 claims in a total amount of \$3,687.28.

The notice of hearing mentions the Landlords are seeking compensation in the amount of \$2,449.00 for ten damage-related claims.

Based on the 5 emails submitted as proof of service, I find the Landlords failed to prove service of the invoices and the monetary order worksheets, as the emails indicate the Landlord only attached the photographs and the notice of hearing.

Policy Guideline 12 states “All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.”

I find that the Landlords had to serve the monetary order worksheet and the invoices to both tenants, as these documents are essential for both tenants to understand the claim for losses related to damages and defend themselves.

As the Landlord did not serve the monetary order worksheets and the invoices to the Tenant, I dismiss with leave to reapply the claims for monetary losses related to damages. I find it fair to grant leave to reapply, as I did not hear the merits of this claim.

The Tenant submitted into evidence 18 response evidence documents in the Landlords' application. The Tenant affirmed that she is “pretty sure” that she emailed these documents to the Landlord.

The Landlord stated he did not receive the Tenant's response evidence.

Based on the Tenant's vague testimony, I find the Tenant failed to prove service of the response evidence. I excluded the Tenant's response evidence.

Correction of the rental unit's address

Both parties agreed the rental unit's address is the address recorded on the cover page of this decision.

Pursuant to section 64(3)(a) of the Act, I have amended the Tenant's application.

Issues to be Decided

Are the Landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposits?
3. an authorization to recover the filing fee?

Are the Tenants entitled to:

1. an order for the return of the deposits?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted 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 Landlords' and Tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on October 25, 2020 and ended on June 30, 2023. Monthly rent when the tenancy ended was \$2,142.00, due on the first day of the month. The Landlord collected a \$1,050.00 security deposit and a \$350.00 pet deposit and currently holds it in trust the deposits in the total amount of \$1,400.00.

Both parties also agreed the Tenant served and the Landlord received the forwarding address in writing on June 30, 2023.

The Tenant did not authorize the Landlords to retain the deposits.

The Landlords submitted their application for dispute resolution on July 13, 2023.

The Landlords are seeking loss of rental income of \$2,142.00, as the Tenants did not pay July 2023 rent.

Both parties agreed the Tenant served and the Landlords received a notice to end tenancy in writing on June 22, 2023 and did not pay rent due on July 1.

The Landlord testified he re-rented the unit on August 1, 2023 and allowed the new tenants to move in a few days early. The Tenant said the new tenants moved in mid-July 2023. The Landlord affirmed he did not receive rent for July 2023.

The Tenant stated that she terminated the tenancy because she was in danger and that she did not have conditions to pay rent in July 2023.

Analysis

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.

Loss of rental income

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Per section 45(1), a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that “is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.”

I accept the uncontested testimony that monthly rent was \$2,142.00 when the tenancy ended, the Tenant served and the Landlords received a notice to end tenancy in writing on June 22, 2023 and the Tenant did not pay July 2023 rent.

If a tenant is in danger or faces financial difficulties, the tenant must still comply with sections 26(1) and 45(1).

As the Tenant only provided notice to end tenancy on June 22, 2023 the earliest date the Tenant could terminate the tenancy was July 31, 2023. The Tenants must pay July 2023 loss of rental income, per sections 26(1) and 45(1).

I award the Landlords July 2023 loss of rental income in the amount of \$2,142.00.

Deposits

If the landlord does not have the tenant's agreement in writing to retain the deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I accept the uncontested testimony the Landlords received the forwarding address in writing from one of the tenants on June 30, 2023. The Landlords submitted their application on July 13. Thus, I find the Landlords complied with section 38(1) of the Act.

I dismiss the Tenant's claim for an order for the return of the deposits, as the Landlords complied with section 38(1) and I awarded the Landlords an amount that is bigger than the deposits.

Filing Fees and Summary

I authorize the Landlords to recover the \$100.00 filing fee, as the Landlords were successful in their application.

The Tenant must bear the cost of the filing fee, as the Tenant was not successful.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the Landlords to retain the \$1,400.00 deposits in partial satisfaction of the monetary award.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$30.84.

In summary:

Item	Amount \$
July 2023 loss of rental income	2,142.00
Filing fee	100.00
Subtotal	2,242.00
Minus deposits and interest	1430.84
Total	811.16

Conclusion

Per sections 26, 38, 67 and 72 of the Act, I authorize the Landlords to retain the \$1,430.84 deposits and award the Landlords \$811.16.

The Landlords are provided with this order in the above terms and the Tenants must be served with this order. Should the Tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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 Act.

Dated: February 2, 2024

Residential Tenancy Branch