



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Applications for Dispute Resolution (Landlord's Applications) under the *Residential Tenancy Act* (Act) for:

- recovery of unpaid rent or utilities;
- compensation for damage to the rental unit;
- compensation for monetary loss or other money owed;
- retention of the security deposit; and
- recovery of the filing fees.

Tenant M.M. attended the hearing on their own behalf. They did not act as an agent for K.K., who was not served with the Proceeding Packages as set out below.

Landlord J.E.R. attended the hearing for the Landlord.

Service of Notices of Dispute Resolution Proceedings (Proceeding Packages)

The Tenant M.M. acknowledged receipt of the Proceeding Packages from the Landlord and raised no concerns regarding service or receipt. I therefore found them duly served for the purposes of the Act.

However, the Landlord acknowledged that they did not have an address for the Tenant K.K. and therefore did not serve them. M.M. stated at the hearing that they do not have K.K.'s address, and that K.K. now lives in another province. As I am not satisfied that K.K. was properly served by the Landlord as required, I find that it would be administratively unfair to proceed against them. This hearing therefore only proceeded against the Tenant M.M., whom I will refer to as the "Tenant".

Preliminary Matters

The Landlord confirmed twice at the outset of the hearing that the total amount of the monetary claims made between both Applications was \$48,628.52. One Application claimed a total of \$35,100.00 in compensation and the other claimed \$13,528.52. Additionally, the Landlord acknowledged that although they claimed for unpaid rent and physical damage, this was an error, as they had intended to claim for losses associated with overholding the rental unit and interference by the Tenants in the sale of the home.

Rule 6.2 of the Residential Tenancy Branch Rules of Procedure (Rules) states that the hearing is limited to matters claimed on the Application. During the hearing, the Tenant stated several times that they thought the Landlord was claiming for unpaid rent and utilities and damage, as that is what the Applications stated. Under the circumstances, I therefore did not find it appropriate to amend the claim types under 7.12 of the Rules.

Section 58(2)(a) of the Act states that except as provided in subsection (4)(a) of the Act, the director must not determine a dispute if the amount claimed for debt or damages is more than the monetary limit for claims under the [Small Claims Act](#), excluding any amount claimed under any of the following provisions of this Act::

- section 51(1) or (2);
- section 51.1;
- section 51.3; and
- section 51.4.

As the claims before me from the Landlord do not relate to any of the above noted sections, are in excess of \$35,000.00 in total, and as there is no evidence before me that the BC Supreme Court has ordered that the director of the Residential Tenancy Branch (Branch) hear and determine these disputes, I therefore decline to hear and decide them for lack of jurisdiction under section 58(2)(a) of the Act.

The Landlord was advised that they may file their claim for the full amount in BC Supreme Court, or may reduce the total amount of all monetary claims, except claims made under sections 51(1), 51(2), 51.1, 51.3, and 51.4 of the Act, to below \$35,000.00. This includes amounts claimed for recovery of filing fees. The Landlord is cautioned that if they choose to re-apply at the Branch, they must ensure that they are filing the correct monetary claim types.

The Landlord sought retention of the Tenants' security deposit and pet damage deposit. However, the entirety of the Landlord's Application has been dismissed for lack of

jurisdiction. Pursuant to Residential Tenancy Policy Guideline (Guideline) 17, section F, I must therefore assess whether the Tenant is entitled to the return of all, some, none, or double the amount of their security and pet damage deposits, plus any interest owed.

Issues to be Decided

Is the Tenant entitled to the return of any portion of their security and pet damage deposit, or double their amounts, plus any interest owed?

Background and Evidence

The parties agreed that:

- \$1,750.00 was paid to the Landlord for a security and pet damage deposit on July 15, 2022;
- the Tenancy ended on either December 15, 2023, or December 16, 2023;
- no condition inspections or reports were completed; and
- none of the criteria set out under sections 38(3) and 38(4) apply.

The Landlord acknowledged that they still hold the full amount of the deposits and that no amounts have been returned.

The Tenant stated that they provided their forwarding address in writing to the Landlord in person on December 1, 2023. Although the Landlord could not recall if this is the correct date, they acknowledged receipt on or around that date.

The Tenant argued that they should be entitled to double the amount of their deposits as the place was left clean and undamaged, they were told this by a previous arbitrator, and the Landlord's Application is entirely without merit. The Landlord disagreed stating that they do not think it is fair that these deposits be returned to the Tenant, as the Tenant already received compensation from the Branch and they have suffered significant financial loss.

Analysis

I accept the affirmed testimony of the parties that the Landlord had no right to retain the \$1,750.00 in deposits paid by the Tenants under sections 38(3) or 38(4) of the Act. I am also satisfied that the Landlord breached sections 23 and 35 of the Act by failing to:

- properly schedule condition inspections;
- complete condition inspections;

- complete condition inspection reports; and
- provide copies of completed condition inspection reports to the Tenants.

As a result, I find that the Landlord extinguished their right to claim against the security and pet damage deposits under sections 24 and 36 of the Act, but only for physical damage to the property. The Landlord retained the right to claim against the security deposit for matters unrelated to physical damage. As pet damage deposits may only be retained and claimed against by landlords for pet damage, as set out in the Act and Guideline 31, the Landlord did not retain such a right in relation to the pet damage deposit.

I accept that the Tenant provided their forwarding address to the Landlord on or about December 1, 2023, as agreed upon by the parties. I also accept that the tenancy ended on either December 15, 2023, or December 16, 2023. As the Landlord filed their Application seeking retention of the deposits on December 29, 2023, I find that the Landlord complied with section 38(1) of the Act in relation to the security deposit, regardless of whether the tenancy ended on December 15th or December 16th, 2023, as they claimed for more than physical damage in their Applications. However, as the Landlord was not entitled to claim against the pet damage deposit for damage, and pet damage deposits may only be claimed against for damage, I find that the Landlord therefore breached section 38(1) of the Act when they failed to return the \$875.00 pet damage deposit to the Tenants, plus any interest owed, within the timeline set out under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. I have already found above that the Landlord complied with section 38(1) of the Act in relation to the security deposit. I find that the doubling provision therefore does not apply to that deposit, regardless of the Tenant's beliefs about the validity of the Applications and claims. However, the Landlord was not entitled to claim against the pet damage deposit and was therefore required to return it within the time limit set out under section 38(1) of the Act, as set out above. As I am satisfied that they did not do so, I therefore award the Tenant \$1,750.00, double its amount, under section 38(6) of the Act.

As the Landlord's Applications against the security deposit have been dismissed for lack of jurisdiction under section 58(2)(a) due to their amounts, I therefore order the Landlord to return the Tenants' \$875.00 security deposit, plus \$24.97 in interest owed. I also

order the Landlord to return \$1,750.00, double the amount of the Tenants' pet damage deposit, plus \$24.97 in interest owed on the based pet damage deposit amount of \$875.00. Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of \$2,674.94, and I order the Landlord to pay this amount to the Tenant.

These findings do not prevent the Landlord from seeking compensation for the dismissed claims at either the Branch or the BC Supreme Court and are not findings in relation to the validity of those claims or amounts. However, it does mean that the Landlord MAY NOT retain either deposit pending the outcome of those claims. They MUST return them as ordered in this decision.

As Tenants are jointly and severally liable, the Tenant M.M. provided affirmed testimony that they paid these deposits themselves, and as the Tenant K.K. was not served, I therefore grant this Monetary Order in the name of only Tenant M.M.

Conclusion

Pursuant to section 67 of the Act, I therefore grant the Tenant a \$2,674.94 Monetary Order. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord is cautioned that failure to comply with my order and the Monetary Order issued may result in a referral to the compliance and enforcement unit (CEU). The CEU may levy penalties of up to \$5,000.00 per day, per contravention. Information on the CEU, including what they do and how to file a complaint, can be found here:

<https://alpha.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 29, 2024

Residential Tenancy Branch