Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and an alleged overpayment of utilities, for compensation for aggravated damages and to recover the filing fee for this proceeding.

The Tenants' agent said the Landlord would not provide her with an address for service or contact number and as a result, she asked the Landlord's property manager if he would accept service of the Application and Notice of Hearing (the "hearing package"). The Tenants' agent said the Landlord's property manager advised her in an e-mail that she could serve the Landlord with the hearing package at the rental unit address. The Tenants' agent said she sent the hearing package to the Landlord on July 13, 2012 by registered mail but the Landlord did not pick it up. Section 89 of the Act says that a Landlord may be served with a Tenants' application for dispute resolution by leaving a copy with an agent for the Landlord or sending it by registered mail to the address at which the person carries on business as a landlord. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and if so, how much?
2. Are the Tenants entitled to recover an overpayment of utilities and if so, how much?
3. Are the Tenants entitled to compensation for aggravated damages?

Background and Evidence

This fixed term tenancy started on September 1, 2011 and was to expire on August 31, 2012 however it ended on May 31, 2012 pursuant to an Order of Possession granted to the Landlord in previous proceedings. Rent was $2,000.00 per month plus utilities. The Tenants paid a security deposit of $1,000.00 and a pet damage deposit of $1,000.00 at the beginning of the tenancy.

The Tenants' agent said the Parties completed a move out inspection on May 30, 2012 and the Landlord received the Tenants' forwarding address in writing at that time. The Tenants' agent said she had a verbal agreement with the Landlord to retain $125.00 of the security deposit for cleaning expenses. The Tenants' agent said the Landlord returned part of the security deposit and pet damage deposit on or about June 9, 2012 to that address, however she retained $508.17 for alleged cleaning and repair expenses, and for the final water bill. The Tenants' agent said the Landlord did not have the Tenants' *written authorization* to keep the balance of the security deposit or pet damage deposit and it has not been returned to them.

The Tenants' agent claimed that the Tenants paid the final water bill in full. The Tenants' agent also claimed that the water bills up to April 2012 were approximately $40.00 to $75.00. The Tenants' agent said in April 2012, the Landlord started running the irrigation system continuously with the result that the final water bill was $311.59. Consequently, the Tenants sought to recover compensation of approximately $270.00 representing the final billing amount less the amount changed for their usual household consumption. The Tenants' agent admitted that the Tenants were responsible under the tenancy agreement for maintaining the yard of the rental property, that they agreed to water the yard for the Landlord and that there was no agreement that the Landlord would reimburse them for the cost of the water.

The Tenants' agent also sought compensation for aggravated damages on the basis that the Landlord had tried to avoid service of the documents for this hearing. The Tenants' agent said the Landlord's partial refund cheque was written on a cheque in her boyfriend's name and that it contained a former address for him and a telephone number that she discovered was not in service. The Tenants' agent said the envelope in which the cheque was mailed did not have a return address. The Tenants' agent also argued that the hearing was only necessary because the Landlord did not comply with their verbal agreement and with the Act.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the Landlord received the Tenants' forwarding address in writing on May 30, 2012 but did not return the full amount of their security deposit of $1,000.00 and pet damage deposit of $1,000.00. I find that the Landlord retained $508.17 of the security

deposit and pet damage deposit without the written authorization of the Tenants and has not applied for dispute resolution to make a claim against them. As a result, I find that pursuant to s. 38(6) of the Act, that the Landlord must return the following amount to the Tenants:

	Double security deposit:	$2,000.00
	Double pet deposit:	$2,000.00
Less:	Payment amount:	($1,491.83)
	Balance Owing:	$2,508.17

I find that there are no grounds upon which to reimburse the Tenants for an overpayment of utilities. The Tenants are responsible under the tenancy agreement for paying for water. The Tenants are also responsible under the tenancy agreement for maintain the yard including watering it. The Tenants' agent admitted that there was no agreement with the Landlord that she would reimburse them for the cost of water used for the yard. Consequently, this part of the Tenants' application is dismissed without leave to reapply.

RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

I find that the reasons for which the Tenants' agent seeks aggravated damages does not meet the test set out above in order to succeed in recovering compensation. In effect, I find that the Tenants' agent is seeking compensation for the time she spent and frustration she endured in bringing this application and trying to locate the Landlord. However, costs of preparing for an attending dispute resolution hearings are costs that are not recoverable under the Act. Consequently, this part of the Tenants' application is also dismissed without leave to reapply. I find pursuant to s. 72 of the Act that the Tenants are entitled to recover from the Landlord the $50.00 filing fee they paid for this proceeding.

Conclusion

A Monetary Order in the amount of $2,558.17 has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: September 12, 2012.

Residential Tenancy Branch