



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNSD

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to recover his filing fee for this application from the tenant;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to retain the security and pet damage deposits.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, to call witnesses and to question one another. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

Issues to be Decided

- Are the landlords entitled to compensation for lost revenue pursuant to Section 67 of the *Act*?
- Are the landlords entitled to retain the tenant's security deposit and pet damage deposit pursuant to Section 38 of the *Act*?
- Are the landlords entitled to recover the \$100 filing fee for this application from the tenant, pursuant to Section 72 of the *Act*?
- Is the tenant entitled to the return of her security deposit and pet damage deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

The landlords have applied to retain the tenant's \$600 security and \$200 pet damage deposits in partial satisfaction of loss of \$1,200 rental revenue for the month of July 2018.

According to evidence submitted by the participants and their testimony, the following is undisputed:

- The tenancy commenced July 1, 2017 with a monthly rent of \$1,200.00 due on the first of each month and the tenant paid a \$600.00 security deposit and a \$200.00 pet damage deposit which the landlords currently hold in trust;
- On June 21, 2018 the landlords served the tenant with an order of possession issued by the Residential Tenancy Branch and the order was effective two days after service;
- The tenant did not vacate the rental unit until July 4, 2018;
- The tenant did not pay any rent for the month of July 2018;
- Through her agent, the tenant provided her forwarding address in writing to the landlord on July 4, 2018 and did not give permission to the landlords to retain any portion of the \$600.00 damage deposit and a \$200.00 pet damage deposit;
- The landlords applied to the Residential Tenancy Branch on July 17, 2018 to retain the tenant's deposits;
- The landlords did not complete a move-in and move-out inspection.

When I asked the landlords what action they took after July 4, 2018 to rent the unit, they replied that they took no action. The landlords testified that they knew someone who would have rented the unit on July 1, 2018 but since the tenant didn't vacate until July 4, 2018, they couldn't give possession to this potential tenant. They did not submit any documentary evidence of this potential tenancy and went on to testify that due to the historical problems of late payments of rent by this tenant and a previous tenant, they decided they no longer wanted to be landlords. They testified that they decided to move into the unit themselves and gave notice to their own landlord to vacate at the end of July 2018.

Analysis

Residential Tenancy Branch's Policy Guideline #3 'Claims for Rent and Damages for Loss of Rent' <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl03.pdf> states:

...if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

The Residential Tenancy Branch's Policy Guideline #16 'Compensation for Damage or Loss' <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl16.pdf> provides the following criteria for an arbitrator to determine whether compensation is due:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the submissions of the landlord I am not satisfied the landlords have suffered a loss of rental income as they have not and do not intend to re-rent the rental unit.

Section 57(1) of the Act defines an "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on the above, I find the landlord is entitled to four days of rent from the overholding tenant: $\$1,200/31 \text{ days} = \38.71 per day $\$38.71 \times 4 = \154.84

With regard to the tenant's application for the return of her deposits, I note the landlords failed to complete a record of a move-in and move-out inspection which is required by sections 23 and 35 of the *Act*. As a result, the landlords extinguished their right to claim for damage to the rental unit. However, this extinguishment only applies to damage and not to other losses, such as unpaid rent.

The tenant provided her forwarding address to the landlords on July 4, 2018. To comply with section 38(1) of the *Act*, the landlords were required to return the deposits to the

tenant or file an application with the Residential Tenancy Branch by July 19, 2018 to retain the deposits. The landlords applied to the Residential Tenancy Branch on July 17, 2018 therefore, I am satisfied that the landlords have complied with their obligations under Section 38(1).

I find the tenant is entitled to the return of her security deposit and pet damage deposit, less \$154.84 for overholding. There is no interest payable on the security deposit and pet damage deposit over the period of July 1, 2017 to the date of this decision.

Conclusion

As the landlords were partially successful in their application, I award 50% of the filing fee to the landlords.

The tenant is provided with an monetary order in the amount of \$595.16 based on the above terms. 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 Orders 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: November 22, 2018

Residential Tenancy Branch