



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlords HK and EG and tenant EC appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation?
2. Are the tenants entitled to a monetary order for the return of the security deposit?
3. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The parties agree on the following:

- The tenancy commenced on December 1, 2019. Rent was initially \$4,100 per month and was increased to \$4,225.00 on December 1, 2021.
- The landlords hold a security deposit of \$2,000.00 in trust for the tenants.
- The tenancy ended on May 31, 2022.
- There was no move inspection completed by the landlords and tenants at the beginning of the tenancy.
- There was no move out inspection completed by the landlords and the tenants together at the end of the tenancy.
- The tenants did not agree in writing that the landlords could retain all or part of the tenants' security deposit.
- The landlords have not filed an application for dispute resolution to retain all or part of the security deposit.

Tenants' Evidence

The tenants submitted that the rent increase in December 2021 exceeded the amount of rent increase allowable under the Act. The tenants testified that the landlord emailed them June 28, 2021 with a rent increase proposal. The tenants stated they responded to the landlords July 1, 2021 stating that there was a rent increase freeze for 2021 but would be happy to follow the rent increase regulations for 2022.

The tenants testified that the landlords then attended at the rental unit and advised the tenants that there would be a rent increase. The tenants started paying rent in the amount of \$4,225.00 on December 1, 2022. The tenants continued paying \$4,225.00 per month until they vacated the rental unit on May 31, 2022. The tenants further submitted that the allowable rent increase for 2022 was 1.5% and rent of \$4,225.00 per month was more than a 1.5% increase. The tenants produced their electronic transfer receipts in evidence showing that they paid \$4,225.00 per month in rent from December 2021 through May 2022.

The tenants testified that they sent their forwarding address to the landlords by email dated June 16, 2022 and the landlords replied to that email. The tenants provided the email and the landlords' response in evidence. The tenants further testified that they provided the landlords with their forwarding address in person on July 13, 2022 and provided RTB Form 41 in evidence.

Landlords' Evidence

The landlords testified that they did not impose a rent increase on the tenants and merely asked them to agree to an increase of \$125.00 per month. The landlords stated that at the October 6, 2022 meeting between the landlords and tenants, the tenants suggested the rent increase.

The landlords testified that they did not receive the tenants' forwarding address. The landlords also pointed to an email sent to the tenants on June 24, 2022 as evidence that they were trying to negotiate the repayment of the security deposit and wished to arrange a time for the tenants to do some further cleaning at the rental unit.

Analysis

Compensation

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

The RTB website provides information to parties about the allowable rent increases for past and current years as follows:

Year	Rent increase limit
2023	2%
2022	1.5%
2021	0%
2020	2.6%
2019	2.5%

The legislation did not allow for a rent increase in 2021. The allowable rent increase for 2022 was 1.5%.

The landlords allege that the tenants suggested the rent increase and agreed to pay the additional \$125.00 per month starting December 1, 2021. Section 43 of the Act states that any rent increase agreed to by the tenants must be in writing. The landlord provided no evidence showing that the tenants agreed to the rent increase in writing. Therefore I find that the tenants overpaid rent in December 2021 and January through May 2022 and are entitled to compensation for the overpayment.

Security Deposit

It is undisputed that the landlords and tenants did not complete either a move in condition inspection of the rental unit as required by section 23 of the Act, or a move out inspection as required by section 35 of the Act. It is undisputed that the tenants did not agree to the landlord withholding all or part of the security deposit. It is undisputed that the landlords have not filed an application for dispute resolution in respect of the security deposit.

I find based on the evidence of the tenants, including the email sent to the landlords on June 16, 2022 that the tenants provided a forwarding address to the landlord. I note that the tenants' evidence of the email includes a response to the email by the landlords. I find that the landlords had received the tenants' forwarding address as of June 16, 2022. Based on section 38 of the Act, the landlords had 15 days from June 16, 2022 to either return the security deposit or file a claim. As the landlords did neither of these things, section 38(6) of the Act requires the landlords to return double the amount of the security deposit to the tenants. The tenants' application for return of double the amount of the security deposit is granted.

The tenants are entitled to compensation for an illegal rent increase and to return of double the amount of the security deposit. The amount of compensation for the illegal rent increase is \$125.00 for December 2022 and \$317.50 for January through May 2023 (\$63.50 per month X 5 months) for a total of \$442.50. Compensation for the security deposit is \$4,000.00.

As the tenants were successful in their application, they are entitled to recover the \$100.00 filing fee for their application.

Conclusion

The tenants are granted a monetary order as follows:

Claim	Amount
Illegal rent increase	\$442.50
Security deposit (double)	\$4,000.00
Filing fee	\$100.00
Total	\$4,542.50

The monetary order must be served on the landlords. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 28, 2023

Residential Tenancy Branch