Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent; an Order of Possession for Cause; a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing an Application for Dispute Resolution. As the rental unit has been vacated there is no need to consider the application for an Order of Possession.

The Tenant filed an Application for Dispute Resolution for the return of the pet damage deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant previously filed an Application for Dispute Resolution for the return of the security damage deposit and to recover the fee for filing an Application for Dispute Resolution. That matter was the subject of a dispute resolution hearing on December 06, 2012, however the issue of the pet damage deposit was not determined during those proceedings.

At the original hearing the Tenant stated that he served the Landlord with his Application for Dispute Resolution, the Notice of Hearing, documents he wishes to rely upon as evidence for these proceedings, and a USB stick, via registered mail, on May 14, 2013. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord stated that he served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and several documents he wishes to rely upon as evidence for these proceedings, via registered mail, on March 18, 2013. The Tenant stated that he did not receive any of the documents the Landlord wishes to rely upon as evidence.

As I was unable to determine whether the Landlord was being untruthful when he stated that he served documents to the Tenant or whether the Tenant was being untruthful when he stated that he did not receive the documents, I determined that it was appropriate to adjourn these proceedings. The Tenant strongly objected to the adjournment because he believes it is an attempt by the Landlord to circumvent the rules of procedure regarding evidence. The Tenant continued to dispute my decision to adjourn the hearing and, after repeatedly informing the Tenant that the decision to adjourn was based on my inability to determine who was being truthful, the Tenant was placed in the mute mode while I explained that the Residential Tenancy Branch would mail each party a Notice of Reconvened Hearing and that each party was expected to attend the reconvened hearing.

The Landlord was directed to send a duplicate package of evidence to the Tenant, via registered mail, no later than May 30, 2013. At the reconvened hearing the Tenant acknowledged receipt of the Landlord's evidence.

Both parties were represented at the original hearing. The hearing was reconvened at 10:30 a.m. on July 04, 2013, at which time the Tenant was present. The hearing proceeded in the absence of the Landlord and was concluded at 10:42 a.m. The Landlord was not represented at the reconvened hearing.

As the Landlord did not attend the reconvened hearing, I find that the Landlord failed to diligently pursue his Application for Dispute Resolution and I therefore dismiss the Landlord's Application without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to the return of his pet damage deposit?

Background and Evidence

The Tenant stated that this tenancy began on December 01, 2011; that he paid a pet damage deposit of $250.00; that the tenancy ended on September 01, 2012; that the Tenant did not authorize the Landlord to retain any portion of the pet damage deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the pet damage deposit.

The Tenant stated that he provided the Landlord with his forwarding address sometime during the middle of December, via email. He stated that he also provided the Landlord with a forwarding address when he served him the Application for Dispute Resolution for the hearing on December 06, 2012. He stated that he also provided the Landlord with a forwarding address when he served him the Application for Dispute Resolution for these proceedings.

Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a pet damage deposit of $250.00; that the Landlord did not return any portion of the pet damage deposit; that the Tenant did not authorize the Landlord to retain any portion of the pet damage deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

On the basis of the undisputed evidence, I accept that the Tenant provided the Landlord with a forwarding address, via email, in December of 2012; that he provided him with a forwarding address sometime prior to December 06, 2012 when he served him with a previous Application for Dispute Resolution; and that he provided him with a forwarding address on May 14, 2013 when he served him with this Application for Dispute Resolution. In determining that the Landlord has been served with the Tenant's forwarding address I was influenced by the fact that the Tenant's address appears on the Landlord's Application for Dispute Resolution, which was filed on March 07, 2013, which corroborates the Tenant's testimony that the address was provided to the Landlord.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Ac*t, as the Landlord has not repaid the pet damage deposit nor filed an Application for Dispute Resolution claiming against it.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act,* the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the pet damage deposit that was paid.

I find that it would have been reasonable and prudent for the Tenant to include the claim for a refund of the pet damage deposit with his previous claim for a refund of the security deposit, in which case this Application for Dispute Resolution would not have been necessary. As this Application for Dispute Resolution was not necessary, I find that the Tenant is not entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of $500.00, which represents double the pet damage deposit that was paid and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: July 04, 2013

Residential Tenancy Branch