Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 25, 2014 by the Tenants to obtain a Monetary Order for the return of double their security deposit and pet deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants were represented at the hearing by S.D. Therefore, for the remainder of this decision, terms or references for the Tenants importing the singular shall include the plural and vice versa.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties entered into a written tenancy agreement, for a fixed term tenancy that commenced on April 1, 2013, which was set to expire on August 31, 2013. The tenancy agreement was completed with initials which indicate the tenancy could continue on a month to month basis after the end of the fixed term. The Tenants were required to pay rent on the first of each month in the amount of $1,200.00 and on April 1, 2013 the Tenants paid $600.00 as the security deposit and $600.00 as the pet deposit. The tenancy ended August 31, 2013.

The Tenants submitted evidence that the Landlord failed to return their security and pet deposits within the required period. Instead, they received an e-mail money transfer on September 20, 2013 in the amount of $600.00.

The Tenant testified that they attempted to contact the Landlord on several occasions but he would not answer their phone calls or e-mails. When they contacted the residential tenancy branch they were advised to send the Landlord their forwarding address in writing; so on November 25, 2013 they sent their forwarding address by Canada Post and in an e-mail, as e-mail was their normal way of communication with the Landlord.

The Landlord testified that he had sublet his rental unit to these Tenants and confirmed he entered into the written tenancy agreement. He argued that he did not receive the Tenants forwarding address in writing, and that is why he did not return the rest of the deposits. He has not made application to keep the deposits and he does not have the Tenants' written permission to keep the deposits.

The Landlord did not dispute the fact that they normally communicated by e-mail but argued that he no longer had or used his previous e-mail address. He stated that he did not have the Tenants' contact information to send them the rest of the deposit money because simply lost touch with them. The Landlord stated that he made no attempt to contact the Tenants once he received their application for dispute resolution because he did not know what the procedure was. The Landlord confirmed that he had moved prior to the end of this tenancy and that he did not provide the Tenants with his new service address or e-mail account.

In closing, the Tenant stated that they have continuously tried to get their deposits returned and made numerous telephone calls but felt the Landlord was not answering their calls because he may have had call display. When their attempts failed they went to the *Residential Tenancy Branch* and followed their instructions and sent the Landlord their forwarding address in writing. The Tenant stated that she even searched the Landlord out on social media and determined his new address after viewing a photo he had posted on line.

Both parties confirmed that their addresses, as listed on the Tenants' application for dispute resolution, were their correct service addresses.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

I favor the evidence of the Tenants, who submitted evidence that they have made several attempts to contact the Landlord, by various methods, in their attempts to get

the rest of their deposit money. When that failed they followed the directions given to them by the *Residential Tenancy Branch* and sent the Landlord a letter on November 25, 2013*,* as supported by their evidence. I favored the Tenants' evidence because it was forthright and credible and confirms they had not provided their forwarding address in writing prior to contacting the *Residential Tenancy Branch.* The Landlord argued that he did not receive the Tenants' forwarding address and he did not know how to get in contact with the Tenants, after he sent them a partial payment through an e-mail money transfer on September 20, 2013.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Landlord's explanation of how he simply lost touch with the Tenants after he changed his e-mail account to be improbable given the efforts put forth by the Tenants to get the rest of their deposits returned. Rather, I find the Tenants' explanation that the Landlord was avoiding them by not answering their calls, to be plausible given the circumstances presented to me during the hearing.

Section 13 of the Act stipulates that a landlord must provide a tenant the address for service and telephone number of the landlord or the landlord's agent. In this case the Tenants served the Landlord with their forwarding address, in writing, to the address provided by the Landlord on the tenancy agreement.

For all the aforementioned reasons, I find that this tenancy ended August 31, 2013, and the Landlord is deemed to have received the Tenants' forwarding address on November 30, 2013, five days after it was mailed to him, in accordance with section 90 of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security and pet deposits of $1,200.00 in full or file for dispute resolution no later than December 15, 2013. The Landlord sent a partial refund of $600.00 on September 20, 2013 and does not possess an Order or the Tenants' written permission to keep the remaining $600.00. As partial

payment was paid prior to the due date of December 15, 2013, the remaining $600.00 is what is in dispute.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I find the Tenants have succeeded in proving the merits of their claim and are entitled to monetary compensation of double the balance owing (2 x $600.00) which is **$1,200.00**.

Conclusion

The Tenants have been awarded a Monetary Order for **$1,200.00.** This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not 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: June 16, 2014

Residential Tenancy Branch