Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 20, 2015 seeking to obtain a Monetary Order for the return of double his security deposit and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement for the return of his fridge deposit

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 hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony and the Landlord confirmed receipt of the Tenant's application for Dispute Resolution and the Notice of hearing documents.

The Landlord testified that he had sent his evidence to the Residential Tenancy Branch (RTB) via fax. He initially stated that it was sent on January 12, 2015 and then stated it was sent on February 12, 2015. He submitted that he did not have a fax receipt indicating the date and time the fax would have been sent and argued that he was telling me the date of the cover letter that was with their evidence which included a tenant ledger and a repayment plan signed by the Tenant. No evidence had been received on file from the Landlord and there was nothing on the RTB Record that would indicate a fax had been received from the Landlord.

The Landlord then asked for an adjournment because the Tenant had not come to the Landlord's office to pick up the Landlord's evidence. Upon further clarification the Landlord confirmed that he had not served his evidence upon the Tenant; rather, he had seen the Tenant on the sheet and asked him to stop by and pick up the Landlord's evidence.

The Tenant confirmed that he had seen his former Landlord on the street and he did ask him to stop by to pick up evidence but he said he did not feel he was obligated to come and pick up the evidence as the Landlord was required to serve the evidence to him.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 6.4 provides that without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

a) the oral or written submissions of the parties;

b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
e) the possible prejudice to each party.

The Landlord confirmed receipt of the hearing documents and those documents include detailed instructions on the requirements for service of evidence. Section 88 of the Act provides various methods for a landlord to serve their evidence upon a tenant and does not include a requirement for a tenant to pick up a landlord's evidence from the landlord's office.

After careful of the above, I found that the Landlord provided insufficient evidence to prove he served his evidence upon the RTB. Furthermore, I found that the Landlord did not serve the Tenant with copies of their evidence in a manner prescribed in section 88 of the Act. Therefore, even if the Landlord had faxed their evidence to the RTB it could not be considered as it was not properly served upon the Tenant.

In addition to the foregoing, both parties were represented at this hearing and were prepared to provide oral evidence. Therefore, as the Tenant had already waited seven months for his hearing, I found it would be prejudicial to the Tenant to delay this proceeding any longer. Accordingly, I refused the Landlord's request for an adjournment and proceeded with the hearing. I did however grant the Landlord leave to read the contents of documents into evidence.

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. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to the return of double his security deposit?
2. Has the Tenant proven entitlement to the return of a fridge deposit?

Background and Evidence

The undisputed evidence was the Tenant entered into a written month to month tenancy agreement that began on approximately May 1, 2011. Rent of $375.00 was due on or before the first of each month and on or around May 2011 the Tenant paid $187.50 as the security deposit. The Tenant vacated the rental unit on December 19, 2014.

The Tenant testified that the Landlord conducted an inspection of his room when he moved out and said everything was okay as his rental unit was only a single room with concrete walls. He said he gave the Landlord his new address on a piece of paper and expected to hear about his security deposit. He argued that he heard nothing from the Landlord after he moved out. He said he was also seeking the return of his fridge deposit which he paid $150.00 for.

The Landlord testified that he had prior knowledge of where the Tenant was moving to because he had attended meetings where his placement was discussed and because the Tenant was moving into a building just around the corner. He submitted that their rental unit was considered "low barrier housing" so they had regular monthly meetings with the Tenant and his outreach workers. He argued that he did not have anything on the Tenant's file with his new address written on it and he could not recall if the Tenant gave him his forwarding address when he moved out.

The Landlord confirmed that he had told the Tenant that his room was left in perfect condition. He argued that there was no discussion about the security deposit because the Tenant had forfeited his security deposit prior to the end of the tenancy. The Landlord submitted that on 03/06/2014 (March 6, 2014) the Tenant signed a repayment agreement for $175.00 of outstanding rent. The agreement was read into evidence by the Landlord who said as follows:

> *Signed 03/06/2014 Finally the Tenant agrees that if they vacate their suite before the completion of this agreement their security deposit and any applicable interest will be forfeited to settle their outstanding balance.*

The Landlord asserted that at the time the Tenant moved out he owed $575.00 in outstanding rent. He said they did not apply for Dispute Resolution to recover the outstanding rent or to keep the security deposit because they are dealing with low barrier housing tenants who are on income assistance or disability assistance and because the Tenant forfeited his security deposit.

The Landlord testified that he was not at this building in 2011 and there was no record of a fridge deposit on the Tenant's file. The Landlord submitted that the building had been turned into a SRO (Single Room Occupancy) facility back in 2011 with single rooms with fridges. There were no receipts that would indicate the occupants were charged a fridge deposit that he ever saw.

The Tenant clarified that his rent was always paid directly to the Landlord by the Ministry so he could not confirm the actual amount of his rent. He recalled paying the $150.00 fridge deposit in cash but he no longer had the receipt due to a flood which ruined his papers. The Tenant submitted that he could not recall if he signed an agreement to repay money owed to the Landlord and he expected to hear from the Landlord about his security deposit when he moved out.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 38(4) of the Act stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Section 20(3) of the Act stipulates that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In this case the Landlord required that the Tenant sign a prepayment agreement on March 6, 2014 that required the Tenant to forfeit his security deposit if the amount owed was not paid. This agreement was created nine months prior to the end of the tenancy. Therefore, I find the repayment agreement signed March 6, 2014, does not meet the requirements of section 38(4) of the Act as it was entered into prior to end of the tenancy. Furthermore it is in breach of section 20(3) of the Act. Therefore the Landlord was required to disburse of the security deposit in accordance with section 38(1) of the Act as follows.

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.

The undisputed evidence was this tenancy ended December 19, 2014, when the Tenant vacated the rental unit and the Landlord had prior knowledge of when the Tenant was being moved to through meetings with his Outreach Worker. Therefore, the Landlord was required to return the Tenant's security deposit in full, file for dispute resolution no later than January 3, 2015, or enter into a written agreement with the Tenant when the tenancy ended. The Landlord did none of the foregoing.

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 deposit and the landlord must pay the tenant double the security deposit.

The Tenant has succeeded in proving the merits of their claim and I award them double their security deposit plus interest in the amount of **$375.00** (2 x $187.50 + $0.00 interest).

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In response to the Tenant's claim for the return of a $150.00 fridge deposit, in absence of documentary evidence to prove a deposit was paid and in the presence of the Landlord's disputed testimony, I find the Tenant submitted insufficient evidence to prove he paid a fridge deposit. Accordingly, I dismiss his claim for the return of a fridge deposit, without leave to reapply.

Conclusion

The Tenant has partially succeeded with his application and has been awarded the return of double his security deposit plus interest in the amount of $375.00.

The Tenant has been issued a Monetary Order for **$375.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the 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 17, 2015

Residential Tenancy Branch