Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on April 09, 2015 seeking to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

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 one Tenant, M.A. Each person gave affirmed testimony and the Tenant stated that he would be representing both Tenants in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Landlord stated that she had received an enveloped some time ago by registered mail that had several papers in it regarding this hearing; however, she did not have those papers with her during the hearing. She asserted that she had gone to the Residential Tenancy Branch (RTB) on several occasions to try and obtain the Tenants' address because the document she had for the hearing did not list the Tenants' address.

The Tenant testified that they sent the entire hearing package, including all hearing documents and application papers to the Landlord by registered mail.

Upon review of the RTB Record I note that the record indicates the Landlord had contacted the RTB on three occasions regarding this application. The first was on August 28, 2015 when the Landlord attended at the RTB, showed her identification and requested a copy of the Notice of Hearing Document as she had misplaced her copy. The Landlord had submitted one page of evidence to the RTB on August 28, 2015 which was placed on the hard copy file on September 01, 2015. The third contact was on September 15, 2015 when the Landlord called the RTB at 12:08 p.m. requesting the information for the conference call as she did not have her Notice of Hearing Document with her.

Based on the submissions by both parties, and in consideration of that the Landlord had received and misplaced her copies of the hearing papers, I accept the submission of the Tenant that the Landlord was sufficiently served with copies of his application for Dispute Resolution and the Notice of Hearing documents.

The Landlord stated that she did not receive evidence or copies of the documents submitted as evidence by the Tenants. She confirmed that she had submitted one document to the RTB as her evidence and because she did not have the Tenants' address her evidence was not sent to the Tenants.

The Tenant confirmed that he had not sent a package of evidence to the Landlord and argued that the evidence consisted of documents she would already have in her possession.

Each person confirmed receipt of the Notice of Hearing Document which states, in part, as follows:

> 1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*
>
> [Reproduced as written]

The RTB Rules of Procedure sections 3.1 and 3.15 provide, in part, that the applicant and respondent must serve the RTB and the other party with copies of their documentary evidence prior to the hearing.

Rule of Procedure 3.17 stipulates that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established in the Rules of Procedure.

Based on the above, I concluded that I will not consider the documentary evidence submitted by either party. It would be prejudicial to consider documentary evidence that was not served upon the other party. Each person was however, given full and fair opportunity to present their evidence by oral submissions and to respond to each other's submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to the return of their security deposit?
2. If so, are the Tenants entitled to the return of double their deposit?

Background and Evidence

The Tenant testified that they entered into a written tenancy agreement which began as a one year fixed term lease sometime in June or July 2011. Rent began at $1,500.00 per month and was raised at some point during the tenancy. The Tenants paid $750.00 as the security deposit sometime around the beginning of their tenancy.

The Tenant submitted that he did not have his documents in front of him during the hearing which is why he could not provide exact dates of his tenancy or service of documents to the Landlord.

The Tenant stated that in January 2015 they sent the Landlord a letter by registered mail which included their notice to end tenancy effective February 28, 2015, and their forwarding address.

He argued that he knows the Landlord received that letter because he included his February 1, 2015 rent cheque in the envelope with it and that cheque was cashed by the Landlord.

The Tenant argued that the Landlord's process in managing the tenancy was too casual and informal. He submitted that no condition inspection report forms were completed at move in or at move out. The Tenant argued that the Landlord did not make herself available to conduct the inspection on February 28, 2015 at 12:00 noon which was technically the end of his tenancy. Rather, the Landlord wanted to schedule the move out inspection for a date after their tenancy had already ended.

The Tenant testified that the Landlord did not return their deposit within 15 days of the tenancy ending. He argued that they did not give the Landlords written instructions on how to handle their deposit so she was required to return the full $750.00.

The Landlord began her testimony by stating that this situation was not personal and it was unfortunate that the Tenant was not telling the truth.

In order to clarify the terms of the tenancy agreement and to keep the Landlord on track I asked the Landlord questions. Through that questioning the Landlord stated that the tenancy began in June or July 2011 as a fixed term leave which continued as a month to month tenancy. Rent started at $1,500.00 per month and she collected a $750.00 security deposit.

The Landlord stated that the Tenants walked through the rental unit before agreeing to rent it. She confirmed that no formal condition report was completed at move in or at move out. She argued that she attempted to conduct the move out inspection prior to February 28, 2015 as the Tenants were already moved out but they refused.

The Landlord asserted that she did not receive any papers from the Tenants. Then she stated that she first heard about their intent to move out when they called her or sent her a text message in January to say they would be moving out at the end of the January. The Landlord stated that she told the Tenants they were required to give her one month's notice before they could end their tenancy.

The Landlord noted that the Tenants had already vacated the property by the time she was telling them about the notice. She then stated that she recalled receiving a registered letter that included their written notice. She argued that that piece of paper did not have their forwarding address. Upon further clarification the Landlord stated that she did not have any documents with her during this hearing and she did not recall if she still had any of those documents.

The Landlord testified that she refused to return the security deposit to the Tenants because they did not clean the rental unit and they did not give her a key or a fob so she could show the unit to new tenants. After a brief discussion the Landlord stated that she did receive a key and fob sometime after she receive the Tenants' notice to end tenancy. She could not recall the exact date but it might have been in February when she received them.

The Landlord argued that cleaning the rental unit was not her job and the female Tenant told her she could deduct the cleaning costs from the security deposit.

At this point I informed the parties about sections 38 and 63 of the *Act.* The parties were given the opportunity to settle these matters. However, after further discussion the parties were too far apart and were unable to reach agreement.

In closing the Tenant stated despite their oral agreement to pay to have the Landlord clean the rental unit, the Landlord did not handle the return of their deposit properly. Therefore, he wished to proceed with his application for the return of double their security deposit.

Each person confirmed their service address prior to the conclusion of the hearing.

Analysis

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

Section 44(1)(a)(i) of the Act stipulates that a tenancy ends if a tenant gives notice to end the tenancy in accordance with section 45.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Notwithstanding the Landlord's arguments that she had to clean and repair the rental unit, I accept the Tenant's submission that their security deposit has not been managed in accordance with the *Act.* I further accept that at the end of January 2015 they served the Landlord written notice to end their tenancy which included their forwarding address and listed an effective date of February 28, 2015. By the Landlord's own submission she confirmed receipt of that letter she just simply could not recall when she received it or what the contents of the letter were.

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.

This tenancy ended on the effective date of the Tenants' notice which was February 28, 2015, pursuant to section 45 of the *Act*. The Tenants had vacated on or before February 28, 2015 and submitted their forwarding address to the Landlord at the end of January 2015.

Based on the above, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than March 15, 2015. The Landlord did neither.

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.
Accordingly, I find the Tenants have succeeded in proving the merits of their application and I award them double their security deposit $1,500.00 (2 x $750.00) plus interest of $0.00 for a total amount of **$1,500.00.**

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenants were successful with their application and were awarded the return of double their security deposit totaling $1,500.00 plus their $50.00 filing fee.

The Tenants have been issued a Monetary Order for **$1,550.00** ($1,500.00 + $50.00). 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 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: September 16, 2015

Residential Tenancy Branch