Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, FF
For the landlord: MND, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for a return of their security deposit and for recovery of the filing fee paid for this application.

The landlords applied for a monetary order for alleged damage to the rental unit by the tenants and for recovery of the filing fee paid for this application.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

As to the landlords' application, the landlords listed a monetary claim of $5000.00; however, the application did not provide a detailed or any calculation of the claim and they mentioned that as of the date of the application, repair work was still being done. In addition, the landlords did not submit documentary or photographic evidence with their application, although this evidence was submitted two months following the landlord's application of May 4, 2015. This evidence did contain a form of a breakdown of their claim, but the landlords' application was not amended.

I refused to hear the landlord's application, pursuant to section 59 (5)(c) of the Act, because their application for dispute resolution did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act.

I find that proceeding with the landlords' monetary claim at this hearing would be prejudicial and procedurally unfair to the respondents/tenants, as the absence of particulars makes it difficult, if not impossible, for the respondents to adequately prepare a timely response to the claim.

The landlords are at liberty to re-apply for their monetary claim as a result, but are reminded to include full particulars of their monetary claim when submitting an application and are encouraged to use the "Monetary Worksheet" form (form RTB-37) located on the Residential Tenancy Branch website; www.rto.gov.bc.ca.

I make no findings on the merit of the landlords' application for dispute resolution. Leave to reapply is not an extension of any applicable limitation period.

The hearing proceeded on the tenants' application.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on September 9, 2009, ended on March 31, 2015, monthly rent began at $1250.00, the ending monthly rent was $1325.00, and the tenants paid a security deposit of $625.00.

The tenants submitted that although there was a walk-through of the rental unit at the end of the tenancy, the landlords failed to provide a move-in or move-out condition inspection report.

The tenants' monetary claim is in the amount of $625.00, comprised of their security deposit.

The tenants submitted that they provided the landlords with their written forwarding address on March 31, 2015, during the walk-through. In explanation, the tenants submitted that they informed the landlord, KF, of their forwarding address, and that she wrote it down in a notebook the landlord was carrying.

Landlords' response-

The landlords denied receiving the tenants' forwarding address on the day of the walk-through, as the tenants instead stated that they were moving down the hill, but did not provide an actual address. The landlords stated that they did not know the tenants' new address until being served the tenants' application, which they received on May 31, 2015, according to the landlords.

The landlord confirmed that they used the address in the tenants' application to serve the tenants with their own application for dispute resolution seeking monetary compensation for alleged damages to the rental unit by the tenants.

Analysis

Tenants' application-

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit and pet damage deposit.

In this case, the undisputed evidence shows that the tenancy ended on March 31, 2015, and the landlords received the tenants' application claiming their security deposit on May 31, 2015, by registered mail.

I find a legal definition of writing refers to a printed or scripted document, as opposed to spoken word. Although I find the tenants submitted insufficient evidence to support that they provided the landlords with their forwarding address on March 31, 2015, the day of the walk-through, I order that the delivery of the tenants' forwarding address through their application for dispute resolution, received by the landlords on May 31, 2015, sufficiently served, pursuant to section 71 of the Act, as the landlords used this address to file their own application for dispute resolution within 15 days of receipt.

Although the landlords did file an application for damages to the rental unit within 15 days of receipt of the tenants' application, the landlords did not mark their application claiming against the security deposit and there was no reference in the details of dispute portion of the application referring to the tenants' security deposit. I therefore find the landlords have not made an application claiming against the tenants' security deposit through the present.

I therefore grant the tenants' application for dispute resolution and, pursuant to section 62(3) of the Act, order that the landlords pay the tenants double their security deposit of $625.00.

I also grant the tenants recovery of their filing fee of $50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the tenants are entitled to a total monetary award of $1300.00, comprised of their security deposit of $625.00, doubled to $1250.00, and recovery of the filing fee paid for this application in the amount of $50.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of $1300.00, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application has been granted.

I have refused the landlords' application for the reasons stated above. The landlords are at liberty to reapply for their 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: September 25, 2015

Residential Tenancy Branch