Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cressey Properties Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that he served the Landlord with the Application for Dispute Resolution and the Notice of Hearing, via registered mail, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received, via Canada Post, on August 05, 2015. On the basis of the undisputed evidence, I find that these documents were served in accordance with section 89 of the *Residential Tenancy Act (Act).*

On January 05, 2016 the Landlord submitted 20 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was mailed to the Tenant's service address on January 05, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Tenant stated that his mother forwarded this evidence to him and that he physically received it on January 18, 2016. He declined the opportunity for an adjournment for the purposes of reviewing the documents he received on January 18, 2016 and stated that he is prepared to proceed with the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of $550.00 was paid;
- the Tenant moved into the rental unit on October 03, 2013;
- the parties signed a new tenancy agreement for a second tenancy that commenced on November 01, 2014;

- a condition inspection report was completed at the start of the first tenancy;
- the tenancy ended on June 30, 2015;
- the Tenant provided a forwarding address, in writing, on June 30, 2015; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord and the Tenant agree that the Agent for the Landlord and the Tenant met on June 30, 2015 for the purposes of inspecting the rental unit and completing the final condition inspection report. The parties agree that the report was "partially completed"; that the report did not have any "charges" on it; and that the report was signed by both parties.

The Agent for the Landlord stated that a copy of the "partially completed" report was left with the Tenant on June 30, 2015. The Tenant stated that it is possible a copy was left with him, although he does not specifically recall that.

The Landlord and the Tenant agree that sometime after the "partially completed" report was signed the Landlord added charges to the report that indicate the Tenant agreed the Landlord could retain $309.00 from his security deposit. The parties agree that a copy of this amended report was not provided to the Tenant until he was served with evidence for these proceedings.

The Landlord and the Tenant agree that the parties also signed a "security deposit refund form" on June 30, 2015; that there were no charges on the form when it was signed by the Tenant; and that the Landlord subsequently added charges to the report that indicate the Tenant agreed the Landlord could retain $309.00 from the security deposit.

The Agent for the Landlord stated that when the condition inspection report and the security deposit refund form was signed the parties verbally agreed that the Landlord would deduct the costs of "what had to be done" at the end of the tenancy. The Tenant stated that he continued to clean after the condition inspection report was completed and that he understood the Landlord would deduct some cleaning costs if additional cleaning was required after he was finished.

The charges on the condition inspection report and security deposit refund form included cost for cleaning, painting, and repairing wall damage.

The Landlord and the Tenant agree that the Landlord returned $241.00 of the security deposit to the Tenant in July of 2015.

Analysis:

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 file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

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 security deposit.

I considered section 38(4)(a) of the *Act* when adjudicating this claim, which authorizes a landlord to keep an amount from a security deposit or a pet damage deposit if 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.

The undisputed evidence is that the charges written on the condition inspection report and the security deposit refund form submitted in evidence were added after the Tenant signed the report and that the report was amended without the full knowledge and consent of the Tenant. As the Tenant did not specifically agree to the deductions on those reports I find that the reports do not constitute written consent to keep any portion of the security deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $1,150.00, which is comprised of double the security deposit, and $50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the $241.00 that was returned to the Tenant in July of 2015, leaving a balance of $909.00.

I grant the Tenant a monetary Order for $909.00. In the event 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: January 20, 2016

Residential Tenancy Branch