Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1069185 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, YC ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had authority to speak on its behalf, as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the first of two written evidence packages from the landlord. The landlord said that he did not serve the second package to the tenant. The landlord is required to serve all of the written evidence that it intends to rely upon at the hearing on the tenant, as per Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Accordingly, I advised both parties that I could not consider the landlord's second written evidence package at this hearing because it was not served to the tenant, only to the RTB. The evidence was irrelevant to the tenant's claim, in any event.

The landlord claimed that the tenant used a different name in his application, than what was indicated on the tenancy agreement. The tenant clarified that he used his "English" name on the tenancy agreement, while he used his legal name in this application. The landlord agreed that he had met the tenant in person during the tenancy, and that the person who was speaking during this teleconference hearing was the same person as the tenant he had met during the tenancy. Accordingly, I find that the tenant who appeared at this hearing is the correct tenant for this tenancy. I have accounted for both of the tenant's names on the front page of this decision and in the style of cause of the resulting monetary order.

At the outset of the hearing, the tenant confirmed that he only wished to obtain a return his security deposit of $435.00 and the $100.00 application filing fee. He clarified that he was not living in the rental unit any longer, so he was not disputing a rent increase, nor had he paid rent above the legal allowable amount. Accordingly, the tenant's application for an order regarding a disputed additional rent increase and an order for the landlord to comply, is dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to a return of his security deposit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant stated that his tenancy began with the former landlord on December 1, 2015. The landlord said that he purchased the rental unit and assumed this tenancy on April 1, 2016.

Both parties agreed to the following facts. Monthly rent in the amount of $870.00 plus an additional $10.00 for parking, was payable on the first day of each month. A security deposit of $435.00 was paid by the tenant to the former landlord. The current landlord obtained the deposit from the former landlord and continues to retain it. Both parties signed a written tenancy agreement from June 1 to 30, 2016, for the tenant to receive one month free in rent from the landlord. A copy of this agreement was provided for this hearing.

The tenant said that the former landlord completed a move-in condition report when the tenancy began. The landlord said that he conducted a move-out condition inspection

without the tenant present. The landlord stated that he did not provide the tenant with a final opportunity to conduct a move-out condition inspection on the required RTB form. The tenant testified that the landlord was provided with a written forwarding address on June 30, 2016, when he left a note for the landlord along with the rental unit keys and dropped them in the landlord's mailbox. The landlord denied receiving the note from the tenant. Both parties agreed that the tenant did not provide written permission to the landlord to keep any amount from the security deposit. The landlord confirmed that he did not file an application to retain the security deposit.

The tenant seeks a return of his security deposit of $435.00 and to recover the $100.00 filing fee paid for this application.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on June 30, 2016. The tenant did not give the landlord written permission to keep any part of his deposit. The landlord did not return the deposit or file an application to retain the deposit.

I find that the tenant did not provide a copy of the note that he said that he left for the landlord with his forwarding address. The landlord denied receipt of any note. As the tenant is the applicant and is required to prove his claim, I find that he has failed to meet this onus. Therefore, I find that the tenant did not provide his written forwarding address to the landlord and the doubling provision of section 38 of the *Act* has not yet been triggered. I find that the tenant is not entitled to the return of double the value of his security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act,* I find that the tenant is entitled to a return of the original amount of his security deposit, totalling $435.00, from the landlord.

As the tenant was mainly successful in this application, I find that he is entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $535.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for an order regarding a disputed additional rent increase and an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

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 26, 2017

Residential Tenancy Branch