Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought a Monetary Order for return of double their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on February 1, 2017. The Tenant's son, M.A., called into the hearing as did the Landlord. Both parties were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter—Naming of the Parties

On the Application for Dispute Resolution the Tenant's son, M.A., included his name as Tenant. As M.A. is not on the tenancy agreement, I amend the Tenant's Application, pursuant to section 64(3)(c) to remove M.A. as Tenant.

In addition, the Landlord's middle initial was erroneously placed before her last name such that her last name was spelled incorrectly on the Tenant's Application. I further amend the Application to correct the spelling of the Landlord's name.

Preliminary Matter—Landlord's Evidence

The Landlord further stated that she provided evidence to the residential tenancy branch "last week". The branch records indicate she brought in documents to the Burnaby Branch office on January 27, 2017, two business days before the hearing. That evidence was not before me.

Rue 3.15 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

3.15 Respondent's evidence

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

> The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.
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> In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].
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> See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

As the Landlord's evidence was not submitted in accordance with the *Rules,* and was not before me at the hearing, it was not considered.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?

2. Should the Tenant recover the filing fee?

Background and Evidence

M.A. testified that the tenancy began in the summer of 2014. Monthly rent was payable in the amount of $1,000.00 and a security deposit was paid in the amount of $500.00.

M.A. stated that a move in condition inspection report was not completed.

M.A. further stated that the tenancy ended on June 29, 2016.

M.A. confirmed that a move out condition inspection report was also not completed.

M.A. testified that on July 19, 2016 he personally handed the Landlord a letter providing the Tenant's forwarding address. A copy of this letter was provided in evidence by the Tenants. This letter also indicates that S.K. witnessed service of the letter on the Landlord.

M.A. testified that the Tenants did not agree to the Landlord retaining any portion of their security deposit.

The Landlord also testified. She stated that the Tenants moved in on July 1, 2014. She confirmed the Tenants paid a $500.00 security deposit. She further confirmed that she did not perform move in and move out condition inspection reports.

The Landlord stated that she mailed the Tenants' security deposit to the address the Tenants provided on July 29, 2016. The Landlord further stated that the letter was not returned to her and the cheque was not cashed.

She stated that she tried to communicate with the Tenants by text message about the fact that they had not cashed the cheque. She confirmed she did not provide evidence of this.

M.A. confirmed that they did not receive a cheque from the Landlord. He also denied receiving any communication from the Landlord regarding her claim that she had sent a letter and cheque to the Tenant in July of 2016.

Analysis

The return of security deposits is dealt with by section 38 of the *Residential Tenancy Act* which provides as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
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> (b) at the end of the tenancy remains unpaid.

(4) 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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

The Landlord claimed she sent a cheque representing the Tenant's security deposit by mail to the address provided by the Tenant. She further claimed that the Tenant did not cash the cheque, nor did they respond to her text communication regarding their failure to cash the cheque. A.M. denied receipt of any communication from the Landlord and specifically denied that she sent a cheque returning their security deposit.

The Tenant applied for dispute resolution on August 4, 2016 seeking return of the security deposit. The address on the Tenant's application is the same as the address provided at the end of the tenancy on July 19, 2016; as such, had the Landlord in fact sent a cheque in July of 2016, she could have sent a further letter to the Tenant at the address provided to enquire as to the status of the cheque.

During the hearing the Landlord asked if the Tenant was required to give notice of their intention to end the tenancy. This question indicates to me that it is possible the Landlord felt entitled to retain the Tenant's security deposit due to her belief she was given insufficient notice.

On a balance of probabilities I find that the Landlord did not return the Tenant's security deposit within 15 days of receipt of their forwarding address in writing. As such, I find the Landlord breached section 38(1) of the *Act.*

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **$1,100.00**, comprised of double the security deposit (2 x $500.00) and the $100.00 fee for filing this Application.

Conclusion

The Tenant is given a Monetary Order in the amount of **$1,100.00** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 01, 2017

Residential Tenancy Branch