Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for double the return of their security deposit pursuant to Section 38 of the Act. The application is inclusive of a request for recovery of the filing fee.

The tenant and the landlord's agent attended the hearing. The parties acknowledged exchange of evidence. The parties were provided opportunity to mutually resolve their dispute to no avail. In that absence the parties were provided opportunity to present any relevant evidence in testimony.

The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to double their security deposit?

Is the tenant entitled to recover their filing fee?

Background and Evidence

The undisputed relevant evidence before me follows. The tenancy began November 01, 2016 and ended prior to the fixed term effective date of October 31, 2017 when the tenant vacated on September 29, 2017. The payable monthly rent was $1035.00 payable in advance on the 1st of the month. At the outset of the tenancy the landlord collected a security deposit of $517.50 which they retain in trust. The parties conducted

move in and move out inspection at the end of the tenancy. The parties agree that, in the least, the landlord received the tenant's forwarding address on the move out Condition Inspection Report (CIR) date of September 29, 2017.

The disputed relevant evidence is as follows. The tenant claims they did not agree as to the administration of the security deposit at the end of the tenancy, and specifically testified they did not agree to the landlord's retention of their security deposit as written in the CIR. The tenant testified that at the time they signed the CIR it was mute and blank in respect to any charges and therefore the charges could only have been inserted onto the CIR after their signature. However , the landlord's representative in this matter (KD) claims the charge of $517.50 representing the amount of the security deposit stated in the CIR was pre-populated onto the form personally by them before the inspection, in the event their less-experienced agent (MC), whom in the absence of KD actually conducted the condition inspection, failed to do so. The landlord testified the tenant would have clearly seen the written charge of $517.50 and could have chosen to alter the CIR if they did not agree. The landlord explained in testimony that the charges were pursuant to the contractual tenancy agreement stating the tenant agreed to the charge as *liquidated damages*.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: ***www.gov.bc.ca/landlordtenant.***

On preponderance of the relevant evidence for this matter on balance of probabilities, I find as follows.

I find the evidence of the parties in this matter is that the individuals present at the time the move out CIR was completed on September 29, 2017 were the tenant and the landlord's representative, MC. I find that while I may accept that the landlord's representative KD pre-populated a portion of a CIR before the inspection, the best available evidence presented as to what was actually signed at the move out inspection of September 29, 2017 is from solely the tenant. I find it was available to the landlord to have presented evidence from the attending landlord's agent MC present at the move out inspection, but did not. As a result, *I prefer* the evidence of the tenant that they did not agree to the landlord retaining their security deposit of $517.50. Regardless, it was discussed during the hearing and the parties were aptly apprised that it remains available to the landlord to seek liquidated damages in this matter through dispute resolution.

I find that **Section 38(1)** of the Act provides as follows,

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on September 29, 2017 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $517.50 and was obligated under Section 38 to return this amount. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for $1035.00 and is further entitled to recovery of the 100.00 filing fee for a total award of $**1135.00.**

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **$1135.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: June 05, 2018

Residential Tenancy Branch