Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision pertains to the Tenants' application for dispute resolution made on April 17, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek a monetary order for the return of their security and pet damage deposit, and for the filing fee.

The Tenants and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties did not raise any issues regarding service of the Notice of Dispute Resolution Proceeding package and all parties confirmed and acknowledged that they had sufficient time to review all documentary evidence submitted.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Are the Tenants entitled to a monetary order for the return of their security and pet damage deposit?
2. Are the Tenants entitled to a monetary order for the filing fee?

Background and Evidence

The Tenants testified that they commenced a six-month fixed term tenancy on August 1, 2017, and that the tenancy became month-to-month thereafter. Monthly rent was $1,750.00. They paid a $875.00 security deposit and a $857.00 pet damage deposit. The Tenants entered into evidence a copy of the written tenancy agreement.

On January 31, 2018, the Landlord served the Tenants with a typed notice to end tenancy for landlord's use of property, specifically, "to further renovate the rental unit and to convert it for another use." The Tenant (A.A.) testified that the notice was slid under their door. (I note that the Landlord's notice, submitted into evidence by the Tenants, is not in the required form as required by section 49 (7) of the Act, and it was not served in a manner that complies with section 88 of the Act.)

On March 31, 2018, the parties conducted a move-out inspection. At the end of the inspection, the Tenants handed the Landlord an envelope containing a letter with the Tenants' forwarding address. The Tenants referred to, and submitted into evidence, two audio recordings, which they submit confirms their giving the Landlord the forwarding address in writing. The Landlord testified that they received an envelope from the Tenants, but that they did not look inside it for a few days, and did not know that there was a forwarding address inside.

About four hours after the inspection, the Tenants returned the keys and an additional letter, through the front door mail slot of the property listed as the Landlord's address of service on the tenancy agreement. The Tenants submitted into evidence, and referred me to, a video of them placing a letter and keys into the mail slot. The video captures the letter in which the Tenants' forwarding address is included.

The Landlord testified that the rental unit is the basement in a house, and in the upstairs, lives their parents. The Landlord confirmed that their address for service is that into which the Tenants placed the keys and letter. However, the Landlord testified that it is likely that their father, who has Alzheimer's, may have not received the letter, or that their father may have thrown it out. The Landlord testified that their family has received numerous pranks from neighbourhood kids who insert pieces of paper into the mail slot; their father may have thought the letter was just such a prank.

The Landlord testified that the first time they received the forwarding address was on April 16, 2018. The Landlord attempted to return the security and pet damage deposit by visiting the Tenants at their new property, but were not allowed on to the property. The Landlord submitted into evidence a copy of a registered mail receipt, a photograph of a cheque in the amount of $1,750.00, and an email to the Tenant (A.A.) stating that they were sending them a cheque for a return of the deposit. Canada Post tracking information shows that the mail was picked up by A.A. on April 18, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38 (1) of the Act reads as follows:

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

> (a) the date the tenancy ends,
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (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;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act states that if a landlord does not comply with subsection 38 (1), that the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the security or pet damage deposit, or both.

Section 88 of the Act lists several methods of serving, or giving, documents (excluding any listed in section 89) to another party. One method is by leaving a copy with the person (s. 88 (a)). Another method is by leaving a copy in a mailbox or mail slot for the address at which the person carries on business as a landlord.

The Tenants testified that they provided the Landlord with their forwarding address in writing on March 31, 2018. While the audio recording submitted does not confirm whether this occurred (the purported moment of envelope handover is silent), the Landlord acknowledged that they received, in-person, an envelope from the Tenants. The Tenants further testified that they later placed their forwarding address in writing through the mail slot at which the Landlord carried on business as a Landlord. The Landlord confirmed that it was their address of service. Video evidence showing the Tenants placing the letter into the mail slot supports the Tenants' testimony.

The Landlord testified and confirmed that they did not apply for dispute resolution. Further, they acknowledged returning the security and pet damage deposits (by registered mail) on April 17 and that the Tenant A.A. picked up the mail on April 18,

2018, three days after the 15 days as set out in section 38 (1).

Taking into consideration all of the evidence and the testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenants have met their onus of proving that they are entitled to a monetary order for return of the security and pet damage deposit.

The Tenants served the Landlord twice with their forwarding address in writing, and did so in compliance with the Act. It is unfortunate that the Landlord's father is the recipient of mail, but it is the Landlord who chose to list that address as their address of service.

The Landlord provided evidence in which a cheque for $1,750.00 was sent by registered mail to the Tenants, and that this mail was picked up by the Tenant A.A. As such, I find that the Tenants are entitled to double the amount of the security and pet damage deposit, less the amount received, for a total monetary award of $1,750.00.

I further grant a monetary award of $100.00 for recovery of the filing fee.

I hereby grant the Tenants a monetary order in the amount of $1,850.00.

Conclusion

I grant the Tenants a monetary order in the amount of $1,850.00. This order must be served on the Landlord and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small 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 Act.

Dated: June 13, 2018

Residential Tenancy Branch