Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 7, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant was represented at the hearing by G.S., an agent. The Landlord attended the hearing on his own behalf. Both G.S. and the Landlord provided affirmed testimony.

The Tenant testified that the Application package was served on the Landlord at the rental property by registered mail on February 8, 2018. A photograph of a Canada Post Customer Receipt bearing the date and a tracking number, and a payment receipt, were submitted into evidence in support. A Track a Package Printout, also submitted into evidence, indicated that a notice card was left at the rental property on February 9, 2018.

On behalf of the Tenant, G.S. testified the Application package was served on the Landlord at the rental property because a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), which was issued by the previous owner on behalf of the Landlord and ended the tenancy, indicated it was being issued by the previous owner based on the written request of the Landlord. The Two Month Notice was issued on the basis that the rental property would be occupied by the Landlord or a close family member of the Landlord. G.S. testified to her belief that the Landlord moved into the rental property when he took possession on or about July 1, 2017, as she met the Landlord and his family there after the tenancy ended.

The Landlord testified he was unaware of the Application until two days before the hearing, at which time he received an email from the Residential Tenancy Branch. The Landlord testified he lived at the rental property for several months after taking possession, but that he maintains his principle residence in another community. He denied being married. Nevertheless, the Landlord confirmed that he attends the rental property regularly and always intended to renovate and sell the rental property. The Landlord testified to his belief that he was never the Tenant's landlord.

In this case, I find it was reasonable for the Tenant to rely on information provided on the Two Month Notice when determining where the Landlord should be served. The Two Month Notice confirmed the Landlord or a close family member of the Landlord intended to occupy the rental property. Further, I accept the Landlord's testimony confirming that he resided at the rental property for several months and attends the rental property regularly, although his residential address is in another community. Accordingly, I find the Landlord is deemed to have been served with the Application package on February 13, 2018, in accordance with sections 89 and 90 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

According to G.S., the tenancy ended when the Tenant vacated the rental unit on June 30, 2017, in accordance with the Two Month Notice. G.S. testified the Tenant paid a security deposit of $775.00 and a pet damage deposit of $775.00, which has not been returned to the Tenant.

Further, G.S. testified the Tenant provided the Landlord with a forwarding address in an email dated July 10, 2017. A copy of the email was submitted into evidence.

In reply, the Landlord had no specific recollection of having received the Tenant's forwarding address by email. Neither did he deny having received it. The Landlord testified to his belief that he was never the Tenant's landlord, but that he required vacant possession to renovate and sell the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 1 of the *Act* provides a definition of "landlord". It states:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> …
>
> *(c) a person, other than a tenant occupying the rental unit, who*
> *(i) is entitled to possession of the rental unit, and*
> *(ii) exercises any of the rights of a landlord under a tenancy agreement or this* Act *in relation to the rental unit;*
>
> [Reproduced as written.]

In this case, I find that the Landlord is a landlord under the *Act*. He is a person who is entitled to possession of the rental unit. Further, the Landlord confirmed during the hearing that he asked the former owner to issue the Two Month Notice as he required vacant possession to perform renovations and sell the rental property. As a result, I find the Landlord also exercised rights of a landlord under the *Act*.

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing on July 10, 2017. Having received the Tenant's forwarding address on that date, the Landlord had until July 25, 2017, to repay the deposit in full or to file an application for dispute resolution. The Landlord did neither. Rather, the Landlord retained the security deposit and pet damage deposit, although he denies having received it from the previous owner or being a Landlord. However, pursuant to section 38(6) of the *Act*, I find the Tenant has demonstrated an entitlement to double the amount of the deposits held by the Landlord.

Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of $3,200.00, which is comprised of $3,100.00 for double the deposits and $100.00 for recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of $3,200.00. The order 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 *Residential Tenancy Act*.

Dated: September 11, 2018

Residential Tenancy Branch