Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This decision pertains to the tenant's application for dispute resolution made on June 28, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks a monetary order for the return of his security deposit and a monetary order for the recovery of the filing fee, pursuant to sections 38(1) and 72(1) of the Act, respectively.

A dispute resolution hearing was convened at 1:30 p.m. on November 27, 2018. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord dialled into the hearing at approximately 1:38 p.m., explaining that she was having trouble dialling into the teleconference number provided. At that point, the tenant had completed his testimony, and I provided a brief recap of his testimony to the landlord.

The tenant testified that he served the landlord with a Notice of Dispute Resolution Proceeding package (the "Notice") by Canada Post registered mail on June 28, 2018. The registered mail tracking number was provided to me by the tenant, and the tenant confirmed the address to which the Notice was mailed. The landlord confirmed that the address was her address of service but stated that she never received anything in the mail from the tenant. However, the landlord acknowledged being aware of the hearing from an email sent to her in September 2018, and again in a reminder email sent to her immediately prior to the hearing from the Residential Tenancy Branch. Based on the oral evidence of the parties, I find that the tenant served the landlord with the Notice in compliance with section 89 of the Act.

Finally, 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 to be Decided

1. Is the tenant entitled to a monetary order for the return of his security deposit?
2. Is the tenant entitled to a monetary order for the recovery of the filing fee?

Background and Evidence

The tenant testified that he commenced a tenancy on January 1, 2014 and that the tenancy ended on or about May 28, 2018. Monthly rent was $1,500.00, later increased to $1,600.00. The tenant paid a security deposit in the amount of $750.00. There was no pet damage deposit.

Shortly after vacating the rental unit, the tenant sent an email on June 5, 2018, to the landlord in which the tenant provided his forwarding address. He then sent, on June 10, 2018 a letter to the landlord; the letter contained his forwarding address. Finally, the tenant testified that there was no written agreement between the parties permitting the landlord to retain any or all of the security deposit at the end of the tenancy.

The landlord testified and confirmed that she received the tenant's forwarding address by email and written correspondence, as the tenant had testified. She testified that the reason she had retained the security deposit was purportedly to pay for outstanding hydro bills left unpaid at the end of the tenancy. Submitted into evidence, and served on the tenant, were copies of utility bills. The tenant disputed the landlord's submissions in this regard, stating that he had always paid the bills and that there was no outstanding debt owed to the landlord at the end of the tenancy.

Finally, the landlord argued that the tenancy agreement was merely a verbal agreement created over 4 years ago and that there is no written proof that there was a security deposit. However, upon questioning, the landlord acknowledged that there was a security deposit in the amount of $750.00, but that this was paid "five years ago," and that it was kept by her to pay for utility bills.

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. In this case, the tenant is making a claim for compensation for the return of his security deposit.

First, I shall turn to section 38(1) of the Act, which concerns itself with security deposits and what happens to them at the end of a tenancy. This section states the following:

> Except as provided in subsection (3) of (4) (a), within 15 days after the later of
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> (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:
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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;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In other words, a landlord may only keep an amount from a security deposit if (1) they have the tenant's written consent to do so, or (2) they apply to the Residential Tenancy Branch for dispute resolution within 15 days of receiving the tenant's forwarding address. Otherwise, a landlord *must* return the entire amount of the security deposit, regardless of whether a landlord thinks that they are owed money by the tenant. That the landlord believed that the tenant owed her money for unpaid utility bills did not grant her a legal right under the Act to retain the security deposit.

In this case, I find that the tenant has established on a balance of probabilities that the landlord received his forwarding address on or about June 10, 2018; the landlord confirmed receiving the tenant's forwarding address around this date. Further, there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit. Finally, the tenant testified—and the landlord did not dispute—that there was no agreement in writing between the parties permitting the landlord to retain any amount from the security deposit.

As such, taking into consideration all the oral and documentary evidence and the testimony of the parties, I find that the landlord did not comply with section 38(1) of the Act. Therefore, I grant the tenant a monetary award for the return of his security deposit.

Section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenant double the amount of the security deposit for a total of $1,500.00, pursuant to section 38(6).

As the tenant was successful in his application I grant a monetary award of $100.00 for recovery of the filing fee.

Conclusion

I hereby grant the tenant a monetary order in the amount of $1,600.00, which must be served on the landlord. 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 Act.

Dated: November 28, 2018

Residential Tenancy Branch