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 August 29, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek monetary orders for the return of their security deposit and 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 on January 4, 2019 and all parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Regarding the service of documents, the landlord testified that he did not receive the Notice of Dispute Resolution Proceeding package or any of the tenants' documentary evidence and was only informed of the hearing by way of a Residential Tenancy Branch (the "Branch") email sent to him on December 5, 2018. The tenant R.K. testified that the tenants mailed the Notice of Dispute Resolution Proceeding package along with their evidence on September 6, 2018. A photograph of the package, on which the landlord's address of service appears, reflects the date of the postage affixation, and additional Canada Post labels indicate that the package was returned to the sender unclaimed. The Canada Post tracking number is included on the package. Online Canada Post tracking information indicates that the package was not claimed. The landlord's address of service was confirmed as that which was listed on the written tenancy agreement. In addition, the landlord testified and confirmed that he remains the owner of the rental unit (a house) and currently resides therein.

Give the above, I find that the tenants served the landlord with the Notice of Dispute Resolution Proceeding package in compliance with section 89 of the Act.

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 deposit?
2. Are the tenants entitled to a monetary order for the recovery of the filing fee?

Background and Evidence

The tenants testified that tenant R.K. commenced a tenancy on June 1, 2015, and that a new tenancy agreement was entered into (which included her now-husband, tenant G.K.) on October 1, 2016. Monthly rent was initially $1,800.00, later increased to $1,900.00 with the new tenancy agreement. The security deposit paid in 2015 was in the amount of $750.00. There was no pet damage deposit. The tenants submitted into evidence a copy of the 2016 written tenancy agreement.

In mid-2018, the tenants purchased a house and gave the landlord verbal notice that they were ending the tenancy. They gave the landlord about two months' notice, which the landlord confirmed in his testimony. The tenants took possession of their new home on July 14, 2018 and moved out of the rental unit mid-July in order to move into their new home.

The tenant spent a few days cleaning ("14 hours") the rental unit and asked the landlord if they could do a walk-through before they moved out. The landlord appeared a bit surprised but said "OK" and that after looking around a bit, not saying much—other than commenting about doing some repainting—said that it "looks good." When the tenant asked the landlord about the security deposit, the landlord responded, "about that . . .", and said that he would not be giving it back to the tenants. He needed the deposit for painting and a new shower door, which had apparently broken about two years earlier.

The tenants testified that no Condition Inspection Report was completed either at the start of or at the end of tenancy. On July 20, 2018, the tenants sent, by way of Canada Post registered mail, their forwarding address to the landlord. Their correspondence included a request for the return of their security deposit. During his testimony, the landlord commented that he received the forwarding address, but then later lost it. A copy of the correspondence was submitted into evidence by the tenants.

Finally, the tenants testified that there was never any discussion or agreement between the parties whereby the landlord could retain any portion of the security deposit.

The landlord testified as to his efforts throughout the tenancy in ensuring that he was a good landlord, and that he did everything that he could to ensure the tenants' needs were met. This included doing various repairs and other replacements of various fixtures. The landlord submitted various documentary evidence of the work that he did in the rental unit.

In respect of the move out inspection, the landlord testified that he was rather taken aback by the tenants' rather perfunctory request to do an inspection, as he did not expect the tenants to move out until the end of July 2018. He commented that he would have conducted a proper inspection had the tenants organized it with him. In their rebuttal, the tenants pointed out that the landlord "could have easily done another walkthrough."

Regarding the Condition Inspection Report, the landlord testified that he completed it but that he lost it, and accepted responsibility for having done so.

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 tenants make a claim for compensation for the return of their security deposit.

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

> 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,
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> (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 this case, I find that the tenants have established on a balance of probabilities that the landlord received the tenants' forwarding address in writing on or about July 20, 2018, and in any event no later than August 29, 2018 (the date on which they filed their application for dispute resolution). There is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit within the time permitted under the Act. Further, the tenants testified—and the landlord did not dispute—that there was no agreement in writing between the parties permitting the landlord to retain any of the security deposit.

Despite whatever costs a landlord claims he or she incurs as a result of having tenants—regardless of whether such costs relate to ordinary wear-and-tear or whether the tenant wilfully destroyed a rental unit—a landlord does not have a legal right to unilaterally keep any of a tenant's security deposit after a tenant moves out.

A security deposit (and a pet damage deposit as well) is essentially held in trust by a landlord until and at such time the tenancy ends, at which point a landlord must either (1) return the deposit in full, (2) apply for dispute resolution within 15 days of receiving the tenant's forwarding address or of the tenancy ending, whichever occurs last, or (3) have a written agreement signed by the tenant allowing the landlord to retain a specific amount of the deposit at the end of the tenancy. In this case, while I do not doubt that the landlord was trying his best to be a good landlord and "do things by the book," as he explained, none of the legal options open to him under the Act were exercised by the landlord.

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

Further, 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 tenants double the amount of the security deposit for a total of $1,500.00.

As the tenants were successful in their application, I grant them an additional monetary award in the amount of $100.00 for the recovery of the filing fee.

Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of $1,600.00.

Conclusion

I grant the tenants 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.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: January 4, 2019

Residential Tenancy Branch