Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on September 17, 2018 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. The Landlord acknowledged receiving those documents and he stated that he is representing the female Respondent at these proceedings. As the Landlord acknowledged receiving these documents, the evidence was accepted as evidence for these proceedings.

On September 07, 2018 and December 05, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on December 05, 2018. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenants agree that:

- a security deposit of $975.00 was paid;
- this tenancy ended on May 31, 2018;
- a final condition inspection report was completed on May 30, 2018;
- on the final condition inspection report the male Tenant agreed that the Landlord could retain $100.00 from the security deposit for repairs;
- beside the entry in which the Tenant authorized the Landlord to retain $100.00 the Landlord wrote the word “estimate”;
- the Tenants provided a forwarding address, in writing, on July 08, 2018, via email;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that he wrote the word estimate beside the entry in which the Tenant authorized the Landlord to retain $100.00 because he did not know how much it would cost to repair damage that had occurred during the tenancy. He stated that he believed he could deduct the true cost of the repairs from the Tenants’ security deposit once he determined the true costs.

Analysis:

On the basis of the undisputed evidence I find that this tenancy ended on May 31, 2018.

On the basis of the undisputed evidence I find that the Landlord received the Tenants’ forwarding address, via email, on July 08, 2018.

In adjudicating this matter I was guided, in part, by the definition provided by the Black’s Law Dictionary Sixth Edition, which defines “writing” as “handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof”. I find that an email meets the definition of written as defined by Black’s Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent

reference. As an email is capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Residential Tenancy Act (Act*) specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served*.* Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email in which the Tenants provided a forwarding address, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

Section 38(4) of the *Act* permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. On the basis of the undisputed evidence I find that the male Tenant gave the Landlord written authority to retain $100.00 from the security deposit. I find that this authority was recorded on the final condition inspection report that was completed on May 30, 2018. I find that this authority is not negated or altered by the word "estimate" which was written beside this authorization.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenants double the security deposit that was remaining at the end of the tenancy, which

is $975.00 less the $100.00 the Tenants authorized the Landlord to retain.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $1,850.00, which includes double the remaining security deposit of $875.00 plus $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 14, 2019

Residential Tenancy Branch