Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pace Realty Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act ("Act")* to get all or part of double the security deposit back, and to recover the cost of their filing fee.

The Tenant, the owner, J.B, his partner, S.B., and an agent for the property manager (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants, the Landlord, and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Parties; I 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.

Neither party raised any concerns regarding the service of the Application and documentary evidence.

Preliminary and Procedural Matters

The tenancy started on July 28, 2014, with monthly rent in the amount of $800.00, due on the first of each month. The Tenant paid a security deposit of $400.00 and a pet damage deposit of $400.00. The Tenant moved out of the rental unit on September 30, 2018, and participated in a move-out condition inspection with a representative of the property management company on October 1, 2018.

The Owner said that he has been renting the house out for over six years. He said the Application rightly names the property management company as the respondent, because: "We were not involved; we don't know these fine folks, never met them before.

[The property management company] recruited tenants and did the condition inspection reports. It's all been [the property management company], so the claim is rightly against them."

No one from the property management company called in to the teleconference initially, until the Owner's partner called them to advise that they should have someone attend. About ten minutes in, the Agent called in and joined the teleconference.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order under the *Act,* and if so, in what amount?
- Is the Tenant entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The Tenant said when she moved into the rental unit, it "wasn't in perfect condition – already had wear and tear". The Tenant submitted a copy of the condition inspection report with notations from both the move-in and move-out inspections. The Tenant's forwarding address was written on the last page of the condition inspection report, which was dated October 1, 2018.

In the hearing, the Tenant said that when they were doing the move-out inspection, "we watched [the property manager, "B"] take the photos. We walked through the unit with him and there were no problems, not anything. There were nail holes from hanging pictures, but that's all. [The property management company] has the exact same information, so they should know."

The Tenant said the owner gave her a thumb drive with photos of the rental unit and the Tenant said:

> …we were a little overwhelmed – a lot of that was already there, so it was kind of overwhelming for us. We didn't do half of the wear and tear. There was a lot of paint missing, a lot of nicks [when we moved in], which it says in the condition inspection report – in every room. All of the damage that [the owner] submitted, we don't think was us, because if you compare the move in and move out…. The photos were taken after we moved out and had been spackled. All the walls were spackled, getting ready to paint the place.

The Owner said that the photos with the spackling were taken the day after he received

the notice of dispute resolution from the property management company in the mail.

> We stopped doing our work and took photos. When we moved back to Prince George, we sat down with [the property management company] to close the file. We sat down with [B. and M.G.] and a stand-in property manager named [S.]. [B.] said 'if I were you guys, there's more than $400.00 worth of damage in that property. I would keep the damage deposit, because you are going to need it.' With that information, we decided we would keep the$400.00 and buy our supplies and do all the repairs ourselves. We signed everything off.

The Owner also said:

> The funds had to come back from [the property management company]; it was in conversation with [the property management company] that we found out about it. And [B.] was worried that we were going to go after more money. I think he was happy that we were going to keep just the $400. That should have been discussed by [B.] with the Tenants. Red flags were popping up with what he was asking me. We were still in Vancouver.

The Owner said that he just had to use plaster to fill in the holes, which was done as soon as they moved in to the rental unit. He said that the Tenant upstairs has been there for over a year and he got them a discount for the paint and saw all the work that we did. However, the tenant in the other unit did not attend or submit any evidence to the hearing.

The Agent said that the move-out condition inspection report was good and then fair in the master bedroom. "When I have to repair rooms and have to repaint, it comes to more than $400.00." No one applied for dispute resolution to retain any portion of the security deposit, nor submitted any receipts for the cost of the repairs done.

The Tenants said: "I don't believe it was painted for a while, because there was a lot of wear and tear there when we moved in. The paint on the walls was flaking. In the move-out inspection, [B.] was really happy with the condition; he didn't write damaged on anything. He said going from a 'G' to an 'F' is reasonable. It wasn't in poor condition; all the damage was there when we moved in. There were a few Gs moved to Fair, which equals reasonable wear and tear and not excessive damage."

The Owner said that he bought the house in 2009, and that it was completely redone and renovated – drywall, fresh paint, within my contract with [the property management

company]. I could only say that with each new tenant they would refresh and spruce up the place. I don't know how the property manager took care of the house. I didn't meet or talk to the tenants." The Agent did not know when the rental unit was last painted before the Tenant moved in.

The Tenant said:

> What's funny is that [B.] said that only a small percentage, if anything would be deducted from the security deposit – he had verbally told us this. We had waited the two weeks, the legal time for them to figure out the move out and deposit and return the security deposit. On October 16 we called to ask for the deposit back. They hadn't given pet or security deposit back. We were passed around to other people. We called them on the 17th and 18th, but no one knew anything. They had no electronic information. On the 19th, we were verbally told by [B.] that [the Owner] wasn't giving back our deposit. That's when we first found out about [the Owner]. It was only verbal. [B.] suggested to us to file a dispute if we wanted to get our deposit back. 'File a dispute, because you guys should be getting it back' he said. He literally told us all of this stuff. That's when I decided to go forward with the dispute. All of this damage was there, but we didn't do it. He was actually really happy that we weren't coming after more money because, it was reasonable to him.

The Agent said: "All I can go by is the move-out inspection and that [B.] is no longer with the company. All I can do is look at the condition inspection report and I have not much more to add."

The Owner said "there was a big disconnect between myself and the property management company; there's a gap here for us. If the extent of the damage was this way, then [the property management company] didn't document this – the extent of the damage before now. [The property management company] didn't document this, and we didn't know, but we were paying them to take care of this."

The Owner said that "because the pet deposit was late, the Tenants were looking for some compensation, but because we were not managing that money, we have no control over that. We gave the pet deposit back the day they filed the dispute - October 19, and we informed [the property management company] of this."

The Tenant said:

> We're pretty honest people. We took care of the place like it was our own. It doesn't say in the condition inspection report that it was excessive – "some holes" only in living room and master bedroom. On the condition inspection report it only said the holes, not all of this other extensive damage. We had hung a TV in the living room and master bedroom, which is what the holes are that we did. All the other holes were there when we moved in. You can see that there was so much wear and tear – nicks, wear, all over in every single room. So much of the damage was not done by us.
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> [The property management company] was late informing us – they have a legal obligation either in electronic form or in person, to inform us of the reasons for keeping the deposit, which we never received. We thought that we were just supposed to walk away and that's that. We were truly expecting it back with only a very small percentage deducted from it.
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> It's been very unprofessional on [the property management company's] part with so much information mixed up between the three parties. I put that on [the property management company], as they haven't been the greatest to deal with.

The Owner said: "Should the ruling go in the favour of the Tenants, because we were not in control of the money, should they be awarded, ultimately whose pocket does that have to come out of? If they're [the property management company] in control of the money and give it back late, whose pocket does it come out of?" In the hearing I said I cannot give legal advice, but as we noted at the beginning of the hearing, the Applicant named the property management company, since they signed the lease as landlord.

On the last page of the condition inspection report it states that the damage to the rental unit for which the Tenant is responsible was "some holes in the walls from hanging stuff in the living room & master bed."

The Tenant signed the condition inspection report on move-in and move-out, but there was nothing in this report indicating that the Landlord may keep the security deposit in whole or in part.

Analysis

Section 38 of the *Act*, and Policy Guideline 17 clearly set out a Landlord's obligation regarding handling the security and deposit.

Section 38(1) states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

The Tenants provided their forwarding address on October 1, 2018, the day after the tenancy ended. The Landlord was required to return the $400.00 security deposit and $400.00 pet damage deposit fifteen days after October 1, 2018, namely by October 16, 2018, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). Neither the property management company nor the Owner did either.

The Owner provided testimony that he returned the pet damage deposit on or after October 19, 2018, but there is no evidence of his having returned any of the security deposit or of having applied for dispute resolution to make a claim against the security deposit. Based on all the evidence before me, I find that the Agent and the Landlord failed to comply with their obligations under Section 38(1) of the *Act*.

Policy Guideline 17 states:

> 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit
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> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant’s agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

> Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.
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> [emphasis added]

Since the Landlord failed to comply with the requirements of Section 38(1) and did not have any other rights under section 38 of the Act to retain all or a portion of the deposits, as per section 38(6)(b) regarding both the security deposit and pet damage deposit, I find that in these circumstances, the Landlord must pay the Tenant double the amount of both the security deposit and the pet damage deposit, less the $400.00 later returned to the Tenant. There is no interest payable on the security deposit. I grant the Tenant an order for $1,200.00.

As the Tenant was successful in their Application, I also award recovery of the $100.00 filing fee in this case.

Conclusion

The Tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of $1,300.00. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 15, 2019

Residential Tenancy Branch