Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenants seek the return (and doubling) of their security deposit under section 38 of the *Residential Tenancy Act* ("Act") and compensation for the filing fee under section 72 (1) of the Act.

The tenants applied for dispute resolution on March 14, 2019 and a dispute resolution hearing was held on May 6, 2019. The tenants and the landlord attended the hearing, and the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

It is noted that the landlord submitted one piece of evidence—a photograph of a piece of paper with writing on it (the "letter")—but submitted it two days before the hearing. She testified that she provided a copy of the letter to the tenants, and the tenants acknowledged receiving the evidence. Indeed, the tenants were the authors of the letter and were familiar with its content. There is also a copy of the letter submitted by the tenants into evidence.

Given the above, I conclude that, while the landlords' evidence was submitted late, I find no prejudice to the tenants in admitting the letter into evidence.

Issues

1. Whether the tenants are entitled to the return of their security deposit.

2. Whether the tenants are entitled to the cost of the filing fee.

Background and Evidence

The tenants testified that the tenancy began August 13, 2018 and ended December 31, 2018. They further testified that monthly rent was $950.00, and the security deposit was $900.00; there was no pet damage deposit. No written tenancy agreement was submitted into evidence.

The tenants further testified that they provided their written forwarding address to the landlords on December 31, 2018 (the above-noted letter that the landlords submitted). They did not provide written consent for the landlords to retain any or all of their security deposit. As of today, they have not received their security deposit.

The landlord, who called into the hearing ten minutes after it had started, testified that the letter confirms that the tenants (a) provided an incorrect forwarding address, and (b) received their security deposit. The letter, which was handwritten on lined paper, reads as follows (redacted where necessary for privacy purposes):

> 31/12/18 10:40 AM
> Forwarding adress:→ [street address]
> [address], BC.
>
> Security Deposit given: →$ 900
>
> [tenants' signatures]

Next, the landlord testified that the tenants signed this letter and that the notation about the security deposit makes it clear that the tenants were returned their security deposit. The landlord testified that she returned the tenants' security deposit. She commented that the tenants are liars, and that even their first and last names (which are identical) suggest deceit.

In rebuttal, the tenants testified that they only wrote and signed that letter to make it clear about the amount owing, that was to be paid, and not that it acknowledges actual receipt of the security deposit. They added that the landlord's grandmother told them, on December 31, 2018, that she only had $500.00 cash on her and that they were to return later to get the full amount. The tenants said that the landlord is lying, and repeated their testimony to the effect that the landlords never returned their security deposit.

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.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit. 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.

In this case, the tenants testified that the landlords have not repaid their security deposit. The landlords disputed this and testified that they have repaid the tenants' security deposit.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the tenants argued that the letter provides their forwarding address along with the amount of the deposit. The landlord argued that the letter is proof of payment.

The letter indicates that the security deposit was "given," which could mean either the security deposit was given to the tenants at the end of the tenancy (which is the landlord's argument) or that the security deposit was given to the landlord at the start of the tenancy (which is the tenants' argument).

However, what tips the balance of probabilities in the tenants' favour, I find, is the inclusion of the forwarding address. I find that, if the letter was indeed a receipt or acknowledgment of the tenants' receiving the $900.00 security deposit, then the inclusion of a forwarding address would be unnecessary. But, the letter includes a forwarding address, which is routinely provided by tenants at the end of their tenancies so that the landlord can send them their security deposit. I also note that the landlord did not call any witnesses to substantiate her claim that they refunded the tenants the security deposit.
Given the above, I conclude that the letter is not confirmation that the landlords

refunded the tenants' security deposit, but rather, is documentary evidence establishing that the landlords retained the security deposit, and that the landlords now had the tenants' forwarding address.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for the return of their security deposit.

Section 38(6) of the Act states that

> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, having found that the landlords did not return the security deposit within 15 days of receiving the forwarding address, and as there is no evidence of the landlords applying for dispute resolution claiming against the security deposit, I find that the tenants are entitled to a doubling of their security deposit pursuant to section 38(6) of the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the applicants were successful I grant their claim for reimbursement of the filing fee.

Finally, as the costs of registered mail are not a claimable expense under the Act, I dismiss that aspect of the tenants' claim, without leave to reapply.

Conclusion

I grant the tenants a monetary order in the amount of $1,900.00, which must be served on the landlords. 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 Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 9, 2019

Residential Tenancy Branch