Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenant seeks the return of her security deposit under sections 38 and 67 of the *Residential Tenancy Act* (the "Act") and compensation for the cost of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on March 7, 2019 and a dispute resolution hearing was held on June 27, 2019. The tenant attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The landlord did not attend.

The tenant testified that she served the Notice of Dispute Resolution Proceeding package (the "package") on the landlord by way of registered mail on March 12, 2019. The package was returned as unclaimed. She provided me with the tracking number.

Where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Given the above, I find that the tenant served the landlord with the package in compliance with section 89 of the Act.

I reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Whether the tenant is entitled to the return of her security deposit.
2. Whether the tenant is entitled to recovery of the filing fee.

Background and Evidence

The tenant testified that the tenancy began on September 1, 2016 and ended on January 31, 2019. Monthly rent was $1,800.00, later increasing to $1,825.00. The tenant paid a security deposit of $900.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence which corroborated the tenant's testimony.

On January 31, 2019, the tenant vacated the rental unit. The landlord was not present and did not conduct a move out inspection; no Condition Inspection Report was completed by the landlord. Later, the landlord returned $500.00 of the tenant's $900.00 security deposit. At no time, the tenant testified, did the tenant consent in writing to the landlord retaining any of the security deposit.

The tenant provided her forwarding address to the landlord by registered mail, which was received by the landlord (who resides in Seattle, Washington) on February 19, 2019. Having verified the tracking number, I was able to confirm that the landlord received the tenant's forwarding address in writing on the above-noted date.

To date, the landlord has not returned the balance of the tenant's security deposit, nor has the landlord filed an application for dispute resolution claiming against the 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 landlord received the tenant's forwarding address in writing on February 19, 2019. The landlord neither repaid the security deposit in full nor did she apply for dispute resolution claiming against the security deposit. Nor, I find, did the landlord have any authority to retain any portion of the security deposit.

Given the above, I find that the tenant is entitled to the return of her 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.

Having found that the landlord did not comply with subsection 38(1) of the Act, I further find that the landlord must pay the tenant double the amount of the security deposit.

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 tenant has met the onus of proving her claim for the return of her security deposit, doubled, less the amount previously returned. Accordingly, I grant the tenant a monetary award in the amount of $1,300.00. (Calculated as $900.00 x 2 - $500.00 = $1,300.00.)

Finally, 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 applicant was successful in her application I grant her claim for reimbursement of the filing fee in the amount of $100.00.

Conclusion

I hereby grant the tenant a monetary order in the amount of $1,400.00, 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.

Except as otherwise provided in the Act, this decision and order is final and binding on the parties and is made on authority delegated to me under section 9.1 of the Act.

Dated: June 27, 2019

Residential Tenancy Branch