Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

In this dispute, the tenant seeks the following relief under the *Residential Tenancy Act* (the "Act") from his former landlord:

1. compensation for rent that was overpaid, but should not have been, to the landlord during the tenancy, pursuant to section 67 of the Act;
2. compensation for his security deposit under section 38(1) of the Act; and,
3. compensation for the filing fee pursuant to section 72 (1) of the Act.

The tenant applied for dispute resolution on February 8, 2019 and a dispute resolution hearing was held on Friday, May 31, 2019. The parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Neither party raised any issues with the service of evidence.

I reviewed evidence submitted that met the *Rules of Procedure,* under the Act, 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 compensation for rent that was overpaid.
2. Whether the tenant is entitled to compensation for the return of the security deposit.
3. Whether the tenant is entitled to compensation for the filing fee.

Background and Evidence

The tenancy began on June 1, 2014 and the monthly rent was $1,200.00. The tenant paid a security deposit of $600.00, which the landlord currently holds in trust. A copy of the written tenancy agreement was submitted into evidence.

On May 1, 2017, after the parties had a verbal conservation, the rent increased to $1,225.00. The rent then increased to $1,350.00 on June 1, 2017. Neither increase was made by way of any notices of a rent increase. Both increases occurred after conversations between the parties and the tenant agreeing to the increases.

The tenancy ended on February 28, 2018, on which date the tenant handed back the keys to the rental unit. While an inspection of the rental took place both at the start of and at the end of the tenancy, the landlord did not complete a Condition Inspection Report on either occasion.

Regarding the forwarding address, the parties disagreed on how that was originally provided. The tenant testified that he sent his forwarding address to the landlord by text and email, but the landlord denied receiving this. A previous decision by an arbitrator found that the landlord had not received the forwarding address.

The tenant then sent his forwarding address to the landlord by way of registered mail on December 18, 2018, which the landlord confirmed receiving on December 20, 2018. It was on this date that the landlord finally had the tenant's forwarding address.

There was no written agreement between the parties whereby the landlord was entitled to retain any portion of the security deposit. Though, the parties made a reference to an offer that was made by the landlord to the tenant in the amount of $300.00; this offer was never finalized, and nothing more happened in that regard.

The landlord argued that the tenant never had an issue with the rent increases back when they were made. If he had an issue, the tenant ought to have raised it then. The tenant paid the increased rent throughout the tenancy without making it an issue, the landlord submitted.

Finally, the parties testified about the condition of the rental unit at the end of the tenancy, and that the landlord needed to do some painting. The tenant disputed this.

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.

Tenant's Claim for Compensation for Return of Security Deposit

Sections 38 (1) through (4) of the Act addresses the obligations of a landlord regarding the return of a tenant's security deposit. I reproduce these sections as follows:

> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
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> (b) at the end of the tenancy remains unpaid.

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
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> > (a) 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, or
> >
> > (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

In this case, the landlord acknowledged receiving the tenant's forwarding address in writing on December 20, 2018. The landlord therefore had 15 days from December 20 in which to either return the tenant's security deposit or file an application for dispute resolution claiming against this deposit. He did neither. Nor is there any evidence that the tenant agreed in writing that the landlord could retain the security deposit. As such, I conclude that the landlord did not comply with section 38(1) of the Act.

Section 38(6) of the Act states that

> If a landlord does not comply with subsection [38](1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (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 section 38(1) of the Act I further find that the landlord must pay the tenant double the amount of the security deposit, in the amount of $1,200.00.

Tenant's Claim for Compensation for Excess Rent

Under section 41 of the Act, a landlord may not increase rent except in accordance with Part 3 of the Act. Sections 42(2) and 42(4) of the Act require that a landlord "must give a tenant notice of a rent increase at least 3 months before the effective date of the increase" and that a "notice of a rent increase must be in the approved form." Further, any rent increase that is more than the amount permitted by the regulations must be

agreed to by the tenant in writing (section 43(1)(c) of the Act).

Finally, section 43(5) of the Act states that

> If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this dispute, the landlord never gave the tenant notice of a rent increase in compliance with the Act, and no notice in the approved form was ever given. And, there was no written agreement by the tenant that the landlord could increase the rent.

A rent increase by way of oral agreement has no legal effect and is unenforceable. In other words, the landlord had no legal right to collect more than $1,200.00 in monthly rent since June 1, 2014. Any amount of rent paid over and above the $1,200.00 is therefore recoverable by the tenant. I refer to this over and about amount as “excess rent,” below. While I recognize the landlord’s argument that if the tenant had an issue with the rent increase he ought to have raised it much earlier, the fact remains that the landlord implemented an illegal rent increase in breach of the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

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 his claim for recovery of the excess rent that was paid. However, given my findings as to the illegal rent increases, I grant the tenant an award of $3,375.00 on this aspect of his claim.

I calculate the award as follows: excess rent in the amount of $350.00 per month multiplied by 9 months (June 2017 to February 2018) plus $225.00 in excess rent for May 2017.

Tenant's Claim for Recovery of the Filing Fee

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 tenant was successful I grant his 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 $4,675.00, 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 Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 3, 2019

Residential Tenancy Branch