



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This review hearing was convened as the result of the tenant's successful review consideration application.

A hearing was held on June 11, 2019, on the tenant's application for dispute resolution, and the tenant failed to attend. Due to the tenant's failure to attend, his application for dispute resolution was dismissed, without leave to reapply.

The tenant filed a review consideration application which resulted in a Decision by another arbitrator on July 7, 2019, granting the tenant a new hearing on his original application for dispute resolution. This was the new hearing, and the merits of the tenant's original application were considered.

The tenant applied for an order for the return of his security deposit, for a monetary order comprised of double his security deposit, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

I note that the landlord had extreme difficulty in the hearing in understanding me or my questions or instructions. The landlord said he did not speak English very well. The landlord struggled with his testimony and my statements throughout the hearing.

I continued with the hearing, as the review hearing Decision of July 7, 2019, by another arbitrator instructed the parties that they were entitled to bring a support person and/or advocate to hearing, in order to assist.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation comprised of his security deposit, doubled, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this tenancy began on March 15, 2017. The tenant submitted that the tenancy ended on March 14, 2018, and the landlord submitted it ended on March 15, 2018. Monthly rent was \$2,700.00 and the tenant paid a security deposit of \$1,350.00; the landlord has not returned any portion of the security deposit.

The undisputed evidence is that the tenant returned the keys to an agent of the landlord on March 15, 2018.

The tenant submitted that when he returned the keys to the landlord's agent, he provided his forwarding address to the agent by text message or by writing it down.

The tenant submitted that there was no move-in or move-out inspection or condition inspection report ("CIR").

The tenant submitted that the landlord failed to return his security deposit in a timely manner, or at all, after the tenancy ended, despite his requests and on March 3, 2019, he sent the landlord a letter by registered mail with his new forwarding address.

The tenant submitted a copy of the written demand letter, and although it had the date of March 2, 2017, the tenant said that was a typographical error, as it should have been March 2, 2019.

The tenant supplied a copy of the registered mail tracking history showing that the registered mail containing his updated forwarding address was received by the landlord on March 6, 2019.

Landlord's response-

The landlord submitted that the tenant caused damage to the rental unit, as it was a new construction when the tenant moved in.

The landlord also submitted that the tenant was late in paying rent during the tenancy.

The landlord submitted that there was a move-in condition report; however, that report was not submitted.

Tenant's response-

The tenant submitted that there was no CIR and that the report referred to by the landlord was from the developer of the rental unit as it was a new build.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find that the tenant has extinguished his rights to the return of his security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on March 15, 2017. I do not find that the tenant provided sufficient evidence to show that his written forwarding address was provided to the landlord or his agent on that date, as

he was unclear if he wrote down the address or sent it by text message to the landlord's agent.

I, however, find the tenant submitted sufficient evidence that he provided his written forwarding address by letter sent by registered mail to the landlord on March 3, 2019, which was received on March 6, 2019. I therefore find the tenant provided his written forwarding address within a year after the date the tenancy ended.

I note that I accepted the written demand letter contained a typographical error as to the date, as the evidence showed it was mailed on March 3, 2019, and the content of the letter referred to a later date in 2017 and to a date in 2018.

There was no evidence from the landlord that he applied for dispute resolution claiming against the security deposit or that he has returned any portion of the tenant's security deposit.

I therefore find the tenant is entitled to a total monetary award of \$2,800.00, comprised of his security deposit of \$1,350.00, doubled to \$2,700.00, and the filing fee paid for this application of \$100.00, which I have awarded him due to his successful application.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$2,800.00.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and, if necessary, filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

As I have granted the tenant's application at this review hearing, I set aside the Decision of June 11, 2019, dismissing the tenant's application. That Decision of June 11, 2019, is of no force or effect.

Conclusion

The tenant's application for monetary compensation is granted as he is awarded a monetary order for \$2,800.00.

The Decision of June 11, 2019, dismissing the tenant's application is set aside and is of no force or effect.

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: August 12, 2019

Residential Tenancy Branch