Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDL, FFL
Tenant: MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlord's Application for Dispute Resolution was made on June 18, 2019, (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or loss;
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on June 18, 2019, (the "Tenant's Application"). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on September 24, 2019 as a teleconference hearing. Only the Tenant attended the hearing and the appointed date and time and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.
The Tenant testified that the Tenant's Application and documentary evidence package was served to the Landlord by registered mail on June 24, 2019. The Tenant provided a copy of the Canada Post registered mail receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the

Act, I find that the Landlord is deemed to have been served with the Tenant's Application and documentary evidence on June 29, 2019, the fifth day after the registered mailing.

Preliminary Matters

Rule 10.1 of the Rules of Procedure provides as follows:

> "*The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*"

Accordingly, in the absence of any evidence or submissions from the Landlord, I order the hearing continue in absence of the Landlord and subsequently dismiss their Application without leave to reapply.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?

2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2017. The Tenant was required to pay rent in the amount of $980.00 to the Landlord on the first day of each month. The Tenant stated that he paid a security deposit in the amount of $475.00, which the Landlord continues to hold. The Tenant stated that the tenancy ended on May 31, 2019.

The Tenant testified that the parties came together on May 31, 2019 to conduct a move out condition inspection. The Tenant stated that he provided the Landlord with his forwarding address during that time and provided photographic evidence of the Landlord writing down the Tenant's forwarding address. The Tenant stated that he also provided the Landlord with his forwarding address via email which was also submitted into evidence.

The Tenant stated that the parties agreed that the Landlord would retain $25.00 from the Tenant's security deposit for cleaning. The Tenant stated that he did not consent to the Landlord retaining any other amount of the security deposit. The Tenant stated that he has not yet received the remaining portion of the security deposit in the amount of $450.00 from the Landlord. The Tenant is seeking double the security deposit. If successful, the Tenant is also seeking the return of the filling fee. No one on behalf of the Landlord attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant vacated the rental unit on May 31, 2019 and provided the Landlord with his forwarding address on May 31, 2019 during the move out inspection. Based on the oral and written submissions of the Tenant, and in accordance with section 88 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on May 31, 2019.

I accept that the Tenant agreed to the Landlord retaining $25.00 for further cleaning in the rental unit. As there is no evidence before me that that the Landlord was entitled to the remaining balance of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the *Act*, that the Landlord had until June 15, 2019, to repay the remaining deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double of the remaining amount of security deposit paid to the Landlord.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator double the remaining amount of security deposit after the agreed upon deduction ($475.00 - $25.00 = $450.00; $450.00 x 2 = $900.00) to determine the amount of the monetary order.

Having been successful, I also find the Tenant is entitled to recover the $100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of $1,000.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of $1,000.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: October 2, 2019

Residential Tenancy Branch