Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for a monetary order for the return of the security deposit and the doubling compensation provisions afforded by Section 38 of the Act. The application is inclusive of an application for recovery of the filing fee.

The tenant and both landlords attended the hearing. The parties were provided opportunity to submit evidence, provide testimony, mutually resolve their dispute, and ask questions of the other. I accept the tenant's testimony they personally served their application to the landlord. The tenant claims they provided the landlord all their document evidence for this proceeding by e-mail, which the landlord disputed, testifying they had not received evidence from the tenant toward this matter. I found that the tenant could not support providing evidence to the landlord in accordance with Section 88 of the Act. Therefore, the tenant's evidence submitted to this proceeding was deemed inadmissible. The landlord provided document evidence to this proceeding. The tenant testified having received the landlord's document evidence therefore their evidence was deemed admissible.

Both parties were given full opportunity to be heard, provide testimony and make submissions.

Issue(s) to be Decided

Is the tenant entitled to monetary amount claimed?

Background and Evidence

While I have turned my mind to the admissible documentary evidence and the

testimony of the parties, solely relevant details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings are set out below.

The disputed relevant facts before me are as follows. The tenancy began April 15, 2017 and ended May 30, 2019. In part, the landlord collected a security deposit of $1000.00 at the outset of the tenancy which the parties agree the landlord still retains in trust. The parties agreed that there was no *move in* or *move out* condition inspections conducted in accordance with the Act or Regulation.

The tenant testified they provided the landlord a written forwarding address via ordinary mail after the tenancy ended, which the landlord denied receiving. The landlord testified in agreement with the tenant's testimony they received an email from the tenant with a forwarding address prior to the end of the tenancy, on or about May 05, 2019, and awaited the tenancy to end, but moreover awaited to subsequently receive the tenant's forwarding address in written form.

Analysis

The full text of the Act, Residential Tenancy Regulation, and other resources, can be accessed via the Residential Tenancy Branch website: ***www.gov.bc.ca/landlordtenant****.*

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities, I have reached a decision as follows.

Section 38(6) of the Act states that the doubling of tenancy deposits provisions apply solely if the landlord does not comply with **Section 38(1).** I find that Section 38(1) states that solely after receiving the tenant's *forwarding address in writing* the landlord must then administer the security deposit by returning it or filing for dispute resolution claiming against the deposit, forthwith.

In this matter, as the parties are in agreement that the landlord received and possessed the tenant's forwarding address in early May 2019, I have considered pursuant to Section 71(3) of the Act, as to whether the tenant's forwarding address was sufficiently given or served for the purposes of **Section 38** of the Act despite not served by a method prescribed in Section 88 or 89 of the Act. I find that a reasonable interpretation of the Act does not favour that a landlord would know that electronic mail (e-mail) is the same to a method prescribed in Section 88 or 89 of the Act. Therefore, in this matter, I find that the landlord cannot be faulted for abiding by the Act and awaiting the written forwarding address in accordance with Sections 88 or 89, as e-mail is not prescribed in Sections 88 or 89. As a result, I do not accept that the landlord was provided the tenant's forwarding address for the purposes of **Section 38** of the Act.

In this matter, I find that I have not been presented evidence that the tenant provided their forwarding address, or the landlord received it *in writing*, as required by the Act.

Therefore, I find the doubling provisions prescribed by the Act do not apply in this matter.

None the less, the parties' agreed evidence is that the landlord did not complete condition inspections in accordance with the Act or Regulation. Therefore, the landlord's right to make a claim against the deposit was extinguished pursuant to **Sections 24 and 36** of the Act, and they would be precluded from making a claim to retain the deposit - even if the tenant had or were to provide the landlord with their forwarding address in concert with all requirements of the Act.

Therefore, as the landlord's right to claim against the deposit have been extinguished, it is appropriate I then Order the landlord to return the original security deposit to the tenant in the full amount of $1000.00. The tenant is further entitled to recovery of the $100.00 filing fee for this application for a total entitlement of **$1100.00.**

> The tenant is given a **Monetary Order** under Section 67 of the Act for the sum of **$1100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant's application has been granted in the above terms.

This Decision is final and binding.

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 23, 2019

Residential Tenancy Branch