Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenants seek a return of their security deposit under section 38(1)(c) of the *Residential Tenancy Act* (the "Act"), a doubling of the amount under section 38(6)(b) of the Act, and, recovery of the filing fee pursuant to section 72 of the Act.

The tenants applied for dispute resolution on August 19, 2019 and a dispute resolution hearing was held on December 12, 2019. One of the tenants and one of the landlords attended the hearing and both 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 respect to the service of notices or evidence.

I have 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 herein.

Issues

1. Whether the tenants are entitled to the return of their security deposit.
2. Whether the tenants are entitled to a doubling of the security deposit amount.
3. Whether the tenants are entitled to recovery of the filing fee.

Background and Evidence

The tenancy started on July 1, 2014 and ended on June 30, 2019. A written tenancy agreement, a copy of which was submitted into evidence, indicated (and the tenant confirmed) that monthly rent was initially $1,600.00. The tenant acknowledged that they paid a security deposit in the amount of $800.00, which the landlords retained at the end of the tenancy. A copy of a receipt confirming that $800.00 was received by the landlords as a security deposit was submitted into evidence.

The tenant testified that there was a walk-through inspection of the rental unit at the start of the tenancy, but that no condition inspection report was completed. He testified that there was also a walk-through inspection at the end of the tenancy, conducted by himself, his wife, the landlord, and the landlord's sister. No condition inspection report was completed at the end of the tenancy. While both parties agreed that there were a few issues with the rental unit both at the start of, and at the end of the tenancy, none of these issues appeared to have been documented in any manner.

Finally, the tenant testified that "no decisions were made" during the final walk-through in respect of any amounts owed by the tenants or that there was any agreement for the tenants permitting the landlords to retain the security deposit. There was "no agreement either formally or casually" for the landlords to keep the security deposit.

A few days after they moved out, the tenant (K.) emailed the landlord on July 3, 2019 in which the tenants provided their forwarding address to the landlords. The landlord responded on July 8, 2019, and wrote the following:

> As far as the security deposit from our rental house, new kitchen counter of the least expensive material will still set us back over $1000. You can get it priced yourself if you choose to. It's 9x2 and the sink will have to be disconnected as well, so extra plumber fees.
>
> In view as to how much extra work there is in painting and cabinet door, plus the garden, I think you should not be too upset over our decision to keep your $800 security deposit.

Around this same time, the landlord apparently phoned the tenant (K.) and told her to "forget about the deposit," testified the tenant.

On July 20, 2019, the tenants sent a registered letter to the landlords in which the forwarding address was included. Canada Post tracking information obtained online indicates that the letter was delivered to the landlords on July 23, 2019. Copies of the above-cited email, the letter, and the Canada Post tracking information were tendered into evidence.

The landlord testified that during the move-out inspection she and her sister were "very disappointed with the house." She further testified that she spoked with the tenant and "[tenant K.] voluntarily said to me if I leave the $800 security deposit [. . .] that is would

only be fair" [*sic*]. The landlord explained that as far as she was concerned, the tenants were under the understanding that there were damages to the rental unit, and that the amount of the security deposit would in no way cover the final cost, especially for the counter, the windows, the refrigerator, and the door (along with some other, minor issues).

The landlord testified that she was also under the understanding that tenant (K.) was or would be willing to forgo at least some of the security deposit, based on a verbal agreement that occurred. In support of this line of argument the landlord submitted a copy of an email dated June 30, 2019, in which she states (excerpted):

> As far as your security deposit we will find out how much it will cost to get a new counter top for the kitchen and to repair the broken glass door on the door cabinet and then I will let you know more about it.
>
> Thank you again for keeping your word.

The landlord testified that they spent a lot of money over the duration of, and at the end of, the tenancy in order to make the rental unit re-rentable. Both parties spoke about painting and other issues with the rental unit.

In rebuttal, the tenant testified that he has "no idea how the damage occurred" with the cabinets, and "no idea when or why [the refrigerator] stopped working." During her rebuttal the landlord expressed hurt and disappointment that it has come to this.

Analysis

As in any administrative hearing, the person who brings an application or makes a claim is required to prove their case on a balance of probabilities in order to be successful. This standard of proof, a balance of probabilities, means that it is more likely than not that the facts occurred as claimed.

Here, the onus is on the tenants to prove (A) that they are entitled to the return of their security deposit under subsection 38(1)(c) of the Act, and (B) that they are entitled to a doubling of the amount of that security deposit, under subsection 38(6) of the Act.

Finally, whether they are entitled to recovery of the filing fee is contingent upon whether they are successful in their application.

Subsection 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.

Subsection 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 dispute, the tenancy ended on June 30, 2019 and the landlords were in receipt of the tenants' forwarding address on or shortly after July 23, 2019. (Though, for all practical purposes, they appeared to be in receipt of it on July 8, 2019, as evidenced by the landlord's response email regarding the security deposit.) Thus, the landlords were legally required under subsection 38(1) of the Act to repay the security deposit or apply for dispute resolution no later than August 7, 2019 (15 days after July 23, 2019). The landlords did neither.

The only exception to the subsection 38(1) requirement is where a tenant *agrees in writing* that a landlord may retain some or all a security deposit. In this case, while the parties appeared to have verbal discussions about the security deposit and what might happen to it – perhaps going so far as an oral agreement – there is zero evidence, oral or documentary, to establish that the tenants agreed in writing that the landlords had a legal right to retain the security deposit.

It should be brought to the landlord's attention that the completion of a Condition Inspection Report (available at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb27.pdf) is the preferred record of the condition of a rental unit at the start and end of a tenancy. It is also the typical method by which a tenant may agree in writing (on page two) to the landlord making deductions from a security deposit. However, the landlords failed to use any sort of such report.

A landlord cannot simply unilaterally keep a tenant's security deposit without either (A) having a tenant agree to its retention, or (B) applying to the Residential Tenancy Branch to keep it. Moreover, a Condition Inspection Report is often the best evidence (along with photographs) a landlord has when proving that a tenant has damaged or left unclean a rental unit.

Applying the law to the facts, I find that the landlords did not comply with subsection 38(1) of the Act. Thus, the tenants are entitled to a full return of their security deposit.

Regarding the tenants' claim for a doubling of the amount of the security deposit, we must turn to subsection 38(6)(b) of the Act, which states:

> If a landlord does not comply with subsection [38](1), the landlord [. . .] (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Given that the landlords did not comply with subsection 38(1) of the Act I find that the landlords must pay the tenants double the amount of the security deposit.

Finally, subsection 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful, I grant their claim for reimbursement of the filing fee in the amount of $100.00.

Thus, a total of $1,700 ($800 x 2 + $100 = $1,700) is awarded to the tenants.

Conclusion

I hereby grant the tenants a monetary order in the amount of $1,700.00, which must be served on the landlords. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding, except as permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 13, 2019

Residential Tenancy Branch