Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenant sought the return, and doubling, of his security deposit pursuant to section 38 of the *Residential Tenancy Act* (the "Act"), and recovery of the filing fee pursuant to section 72 of the Act.

The tenant applied for dispute resolution on August 29, 2019 and a dispute resolution hearing was held on January 7, 2020. The tenant and the landlord attended the hearing and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the tenant entitled to the return of his security deposit?
2. If yes, is the tenant entitled to a doubling of some or all of his security deposit?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy began on January 1, 2017 and ended on August 31, 2017. Monthly rent was $975.00, and the tenant paid a security deposit of $487.50. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

At the end of the tenancy the parties conducted a move out inspection, though the tenant disagreed with what was noted on the Condition Inspection Report and refused

to sign it. None of his roommates signed it, either. Finally, he testified that he at no time gave permission for the landlord to retain any or all of the security deposit.

The tenant “tried to provide” his forwarding address to the landlord who would not accept it. However, he was able to later provide his forwarding address, by email, on September 12, 2017. The landlord responded to the email. A copy of the email was submitted into evidence.

The landlord disputed the reasons why the tenant did not sign the Condition Inspection Report. She described that the rental unit was really quite chaotic and dirty, and that there was no real opportunity to conduct a final inspection. Further, she remarked that while he may have tried to give him his forwarding address, that she may have missed it. (Although, I must admit it was rather difficult to follow this explanation.)

In any event, the landlord tried to send the tenant a portion of the security deposit -- $245.96 to be exact – on September 12, 2017. The tenant refused, and confirmed, that he refused to accept the e-transfer. As he explained it, he was not satisfied with, and would not agree to, only a partial refund.

The landlord briefly mentioned that the reason she had withheld part of the deposit was to compensate for broken tiles, cleaning, and other matters. There was also unpaid hydro and gas bills that the tenant presumably owed.

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.

Section 38 of the Act deals with the procedural requirements of security and pet damage deposits. There are, in a nutshell, only four ways by which a landlord may retain, even on a temporary basis in trust, some or all of a security deposit:

(1) they apply for dispute resolution claiming against the deposit, and do so within 15 days of receiving the tenant’s forwarding address in writing (section 38(1)(d));

(2) the tenant consents in writing to the landlord keeping some or all of the security deposit (section 38(4) of the Act);

(3) the landlord is successful in an arbitration (filed by the landlord) and an arbitrator orders the landlord to keep the security deposit (section 38(4)(b)); or,

(4) the landlord may keep the security deposit if a tenant has not provided their forwarding address within one year of the tenancy ending (section 39 of the Act).

In this dispute, the facts do not support a case by which the landlord had the legal right to retain any of the tenant's security deposit.

Specifically, 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.

The tenant provided his forwarding address to the landlord in writing, by email, on September 12, 2017. The landlord had 15 days to either return the security deposit in full to the tenant or apply for dispute resolution claiming against the security deposit. To be sure, the landlord did attempt to return a portion of the tenant on the same date; the tenant refused to accept the partial return.

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 that the landlord was, and is, required to repay the security deposit pursuant to section 38(1)(c) of the Act.

Regarding the doubling provision for which the tenant has applied, we must now turn to section 38(6) of the Act which states that

> (6) If a landlord does not comply with subsection (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.

Here, the landlord did not comply with subsection 38(1). However, I must take into account that the landlord did attempt return part of the security deposit within the 15-day period. As such, the doubling provision does not apply to the portion of the security

deposit that the landlord attempted to return; the landlord should not be penalized on the entire amount of the security deposit when the tenant had no legal justification under the Act to refuse to accept the said amount. While I understand the tenant's position that it was an all-or-nothing outcome that he wanted, accepting even a partial return would not have impugned on his legal right for the return of the remainder.

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 the doubling of the security deposit, but as I explained above, this doubling shall only apply to the amount of the security deposit not returned.

In summary, the tenant is awarded $729.04 as it pertains to the security deposit aspect of his application. This is calculated as follows: $245.96 + ($241.54 x 2) = $729.04.

Last, the tenant applied for recovery of the filing fee. Subsection 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) of the Act 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 therefore 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 $829.04, 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 Act.

Dated: January 7, 2020

Residential Tenancy Branch