Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on September 18, 2019 seeking an Order granting a refund of the security and pet damage deposits, as well as recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 20, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord attended the hearing, and I provided each with the opportunity to present oral testimony. On behalf of the landlord, the landlord's son attended the hearing to speak to the matters at issue. The tenant gave evidence that they "dropped off a dispute resolution notice" approximately two months after giving the landlord information about their forwarding address. The landlord's son did not dispute this discrete point; therefore, I find there is no evidence to the contrary. I find that the landlord was served with the notice of this hearing and the tenant's evidence, pursuant to section 71 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit and pet damage deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted the following relevant evidence:

- A copy of the residential tenancy agreement which was signed by the landlord and the tenant on November 26, 2011, indicating a monthly rent of $1,250.00 with a security deposit of $625.00 paid and a pet damage deposit of $200.00 paid. The tenancy commenced on November 1, 2011;
- A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") dated April 29, 2019, stating that "The rental unit will be occupied by the landlord or the landlord's close family member. . ." The Notice states the tenant must move out of the unit by June 30, 2019, and provides that the tenant had fifteen days from the date of service to apply for Dispute Resolution or the tenancy would end on the effective vacant date of June 30, 2019;
- Pictures of the rental unit garage door;
- Written submissions from the TT addressing the Notice, the security deposit, and their forwarding address.

In the hearing the tenant provided that he gave his new residential forwarding address to the landlord on June 6, 2019, at the landlord's house. He handed this information to the landlord directly; in the hearing this was confirmed by the landlord's son who stated "the address was handed to [his] father only" with the son not being present at that transaction.

Regarding the security deposit, the tenant stated that he inquired about its return to the landlord's son at the time of the move-out inspection on June 1, 2019. His testimony is that the landlord's son advised him to visit the landlord at his home on June 4, 2019. He provided that the landlord's son found no issues or concerns with the state of the rental unit at the time of the move-out inspection, a process which took around 30 minutes. The tenant made two visits to the landlord. On June 4, 2019, the landlord advised him of damage to the garage door and stated he would not get the security deposit returned. On June 6, 2019 he delivered his forwarding address to the landlord and asked for the security deposit to be returned. The tenant stated that he had no other contact with the landlord after this date.

The tenant also provided that, prior to move out, he asked the landlord's son for an extra key, and was informed that the key he had been using was the only one. That single key was at

that point misplaced. The lock was replaced by the same day, and he advised the landlord's son to retain a portion of the security deposit for the $60.00 cost of the lock replacement.

The landlord's son spoke to the garage door damage, and that he noticed it at the time of the move-out inspection. He compared what he saw to an older image of the garage on Google Maps. He inquired on the cost of repair and received a quote of around $650.00. He stated that the damage was caused during the time of the tenancy and pointed to disarray in the backyard as evidence of the same issue.

Analysis

The *Act* section 38(1) states 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 repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find as fact the tenant gave their forwarding address to the landlord, as provided for in their evidence: they handed it to the landlord personally, as necessary, upon the visit on June 6, 2019. The landlord did not apply for dispute resolution to claim against these deposits within 15 days of receiving this forwarding address.

Even with the landlord's submissions on damages to the garage door, and reciprocally the backyard area, the sole issue before me is that of the merit of the tenant's application. There is no issue on the credibility of either account on the matter of actual damage; rather, the issue is that of reclaiming the deposits in line with the original tenancy agreement and the provisions of the *Act*.

On this point I find the evidence of the tenant is undisputed. I am satisfied that the tenant's new forwarding address was within the landlord's knowledge, as necessary, by June 6, 2019. By not returning the security and pet damage deposit, and not applying for dispute resolution on a claim against the deposits, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security and pet damage deposit, as per section 38(6) of the *Act*.

There was a $60.00 cost of a replacement lock brought about by a missing key. The tenant gave a written submission that states: “The cost to replace the lock was $60 which I advised them they could take off the damage deposit.” The landlord’s son did not dispute this. Given this cost was agreed to, I factor this in to my calculation of the monetary order in this matter.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenants the amount of $1,630.00. This includes $1,530.00 for double the amount of the security and pet deposits, minus the lock replacement cost, and the $100.00 filing fee. I have subtracted the lock replacement cost $60.00 from the original security and damage deposit amounts. I grant the tenants a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 29, 2020

Residential Tenancy Branch