Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Carma Court Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenants sought the return of their security deposit under section 38 of the *Residential Tenancy Act* ("Act") and recovery of the filing fee under section 72.

The tenants applied for dispute resolution on September 30, 2019 and a dispute resolution hearing was held on February 3, 2020. The parties attended the hearing and 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. As such, not all of the parties' testimonies will be reproduced below.

Issues

1. Are the tenants entitled to the return of their security deposit?

2. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 1, 2006 and ended on July 31, 2019. Monthly rent was, at the beginning of the tenancy, $565.00, which was due on the first of the month. There was a security deposit in the amount of $282.50. A copy of the written tenancy agreement was submitted into evidence. Also submitted was a monetary order worksheet.

In regard to the claim for the security deposit, the tenant (M.) testified that he was unable to conduct a walk-through inspection at the end of the tenancy despite asking the landlord's agents (hereafter the "landlord") to do one. According to the tenant, he called the landlord to set up a move-out inspection, but his calls were ignored and not returned. He and the other tenant moved out a few days before the tenancy ended. He went over to the landlord's address and dropped off the keys, after the landlord told him to stay off his property.

No move-out inspection condition report was completed, and the tenants confirmed that at no time did they provide written consent for the landlord to retain the security deposit.

On or about September 13, 2019, the tenants provided their forwarding address, in writing, to the landlord. They never heard back. They called the landlord, who told them that they would not be getting back their security deposit. A copy of the written letter to the landlord containing the forwarding address was submitted into evidence.

The landlord's agent (L.) testified and submitted that "we don't feel that they should get any of their security deposit back for the condition they left" the rental unit in. He testified that tenant M. called three times, and then showed up on his motorcycle and threw the keys over the gate. Regarding the final inspection, the landlord testified that "if there had been any attempt by [D.M.]," that "they were in no shape to do one." I asked him for clarification on this comment and he explained that the rental unit was in no shape to have any inspection. He added, "the suite was one of the worse I've ever seen." And the landlord's agent D. also said that "the whole place was a disgusting mess."

It should be noted that the landlord submitted several photographs of the rental unit purportedly at the end of the tenancy.

As for a Condition Inspection Report, he stated that there was one completed at the start of the tenancy in 2006 and another one when they took over in the summer of 2017. However, they did not complete one at the end of the tenancy because the tenants could not do one.

Both parties testified about a "checklist" that was (according to the landlord) or was not (according to the tenants) attached to the rental unit's door. This checklist was apparently left on the door by a third party on or about June 28, 2019.

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 covers the end-of-tenancy procedures and legal obligations of tenants and landlords regarding security and pet damage deposits. Both parties to a tenancy agreement are expected to comply with this section. Specifically, section 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 to the tenant, or (2) apply for dispute resolution claiming against the security deposit.

Those are a landlord's only options regarding a security deposit at the end of a tenancy. The only other means by which a landlord may keep any or all of a security (or pet damage) deposit is when the tenant has given written consent for the landlord to keep any of the money, or, where an arbitrator orders a landlord to retain the deposit. For clarification, section 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 case, the tenants testified that they provided their forwarding address in writing on or about September 13, 2019. The landlord did not dispute this evidence. The tenants did not agree in writing that the landlord could retain the security deposit. And there is no evidence that the landlord applied for dispute resolution within 15 days of receiving the tenants' forwarding address. While the landlord may have had a claim against the tenants for alleged damage, they failed to avail themselves of such options under the Act.

Taking into consideration all evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for a return of their security deposit. In addition, the tenants are entitled to an additional security deposit interest in the amount of $9.87 (calculated in accordance with section 4 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003).

Having found that the landlord did not comply with section 38(1) of the Act, I must also determine whether section 38(6) of the Act applies. Section 38(6) states that "If a landlord does not comply with subsection (1), the landlord (a) may not make a claim

against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable."

As the landlord did not comply with section 38(1) of the Act, I find that the landlord must pay the tenants double the amount of the security deposit, in the amount of $565.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) 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 tenants were successful, I grant their claim for reimbursement of the filing fee of $100.00.

A total monetary order of $674.87 is awarded. (Calculated as $282.50 + $282.50 + $9.87 + $100.00 = $674.87)

Conclusion

I hereby award, and grant, the tenants a monetary order in the amount of $674.87, 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 the Act.

Dated: February 3, 2020

Residential Tenancy Branch