Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

In this dispute, the tenant sought compensation pursuant to sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act").

The tenant applied for dispute resolution on October 28, 2019 and a dispute resolution hearing was held at 1:30 PM on March 9, 2020. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords did not attend.

The tenant testified that she served the Notice of Dispute Resolution Proceeding package (the "package") on the landlords on October 30, 2019 by way of Canada Post registered mail. The package was return unclaimed. Copies of the receipts, the tracking number, and a photograph of the returned package were submitted into evidence.

I find that the tenant served the landlords in compliance with section 89(1)(c) of the Act, which permits service by way of registered mail. Failure to retrieve one's mail, in the absence of a reasonable explanation, does not void service.

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 the balance of her security and pet damage deposits?
2. If yes, is the tenant entitled to a doubling of that amount?
3. Is the tenant entitled to recovery of the filing fee in the amount of $100.00?

Background and Evidence

The tenancy began on April 1, 2018 and monthly rent was $1,500.00. The tenant paid a security deposit of $750.00 and a pet damage deposit of $200.00. The tenancy ended on May 28, 2020. The landlords returned $200.00 of the deposits but kept $750.00.

The tenant then provided her forwarding address, in writing, to the landlords by way of mail on August 12, 2019. This mail was received by the landlords. A copy of the letter with the forwarding address was submitted into evidence.

Also included in the tenant's evidence was a copy of text messages between the parties, which included the following text message from one of the landlords to the tenant in August 2019 (excerpt):

> We will be able to pay you the remaining damage deposit at that point [in the beginning of September]. I understand that it has been two months but in order for us to help you out when [name redacted] moved out we had to use your damage deposit to come up with the difference, so when you moved out we didn't have a damage deposit to give back to you.

Shortly thereafter, the landlords ended the matter and asked the tenant not to contact them any further.

The tenant testified that she provided no written consent for the landlords to retain the balance of the security deposit and is unaware of any proceeding against her by the landlords for the money. She seeks the return of the security deposit in the amount of $750.00, and requests that this amount be doubled as per section 38 of the Act. Finally, she seeks recovery of the Residential Tenancy Branch application filing fee of $100.00.

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(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.

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 dispute, the landlords had the tenant's forwarding address in August 2019, but neither repaid the full amount of the security deposit nor did they file for dispute resolution within 15 days of receiving the forwarding address, which commenced in mid-August 2019. Neither did the tenant agree in writing that the landlords could retain the balance of the deposit.

Taking into consideration all the undisputed 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 her claim for the return of the security deposit in the amount of $750.00.

Section 38(6) of the Act further 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
>
> (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 section 38(1) of the Act, I find that they must pay the tenant double the $750.00, for a total of $1,500.00, pursuant to section 38(6)(b) of the Act.

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 applicant was successful, I grant her claim for reimbursement of the $100.00 filing fee.

Conclusion

I grant the tenant a monetary order in the amount of $1,600.00, 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 (Small Claims Division) should the landlords fail to pay the tenant this amount.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 9, 2020

Residential Tenancy Branch