Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of double his security deposit pursuant to section 38 and 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by an agent ("**HM**").

The tenant testified, and HM agreed, that he served the landlord with the application for dispute resolution package and supporting documentary evidence.

Preliminary Issue – Landlord's Evidence

The landlord delivered documentary evidence to the tenant by email after 11:00 pm the day before the hearing. The tenant testified he did not see the documentary evidence until 8:00 am the day of the hearing. He testified that he did not have sufficient time to review it in advance of the hearing.

HM testified that due to the ongoing COVID-19 outbreak over the last few weeks, the landlord had forgotten about this hearing entirely. When she remembered, HM testified, she prepared and delivered the documents to the tenant as soon as possible.

Rule of Procedure 3.15 requires that a respondent serve their documentary evidence on the applicant not less than seven days before the hearing. Plainly, the landlord missed this deadline.

However, Rule 3.17 states:

> **3.17 Consideration of new and relevant evidence**
> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The documentary evidence provided by the landlord relates to damage allegedly caused to the rental unit by the tenant.

I find that such evidence is not relevant to the current application. The tenant's application is based on section 38 of the Act, which states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Whether or not the tenant damaged the rental unit is not relevant to this application, as it is not a basis upon which the landlord my refuse to return the security deposit at the end of the tenancy. The landlord's documentary evidence is likely relevant to a future application for dispute resolution she might bring against the tenant, but such an application is not before me today.

As such, I decline to permit the landlord to rely on the evidence delivered to the tenant the evening before this hearing.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order for $1,000; and
2) recover his filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

In December 2011, the tenant entered into a tenancy agreement with the prior owner of the rental unit. In July 2013, the landlord purchased the rental unit from the prior owner and assumed the tenancy. Monthly rent was $1,000. The tenant paid the prior owner a security deposit of $500. The landlord retains this deposit.

The parties agree on the essential facts of this case:

- The tenancy ended on October 31, 2017.
- The keys to the rental unit were returned to the landlord on or about November 9, 2017.
- On or about November 9, 2017, the co-tenant (who is not a party to this application) delivered a hand-written note to the landlord containing the tenant's forwarding address.
- The landlord has not returned any part of the security deposit to the tenant.

HM stated that the tenant caused significant damage to the rental unit during the tenancy, the cost of repair which far exceeded the $500 security deposit. He stated that the landlord has not made an application at the Residential Tenancy Branch to recover the costs of repairing this damage.

Timing of Tenant's Application

The tenant's Application for Dispute Resolution states that the tenant submitted this application to the Residential Tenancy Branch (the "**RTB**") on November 1, 2019. The tenant testified that he attended the Burnaby RTB office in person on October 31, 2019 to make his application but was told by the counter staff stated that he could not file the application there in-person because it was after 2:00 pm. He testified that he then filed his application online (the tenant did not specify what time he did so, or if he did so on October 31, or November 1, 2019).

Analysis

Limitation Period for Tenant's Application

Section 60 of the Act states:

> **Latest time application for dispute resolution can be made**
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> 60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The tenancy ended on October 31, 2017. As such, the tenant is required to have made his application for dispute resolution on or before October 31, 2019. I find that he has not done so. However, following the hearing, I asked the RTB Burnaby staff to advise me of the procedure regarding limitation periods and cut-off procedures. They replied:

> Our cut-off times for paper Applications in November [2019] were 3:00 PM. If the client was not buzzed in to the [information officer] booth by 3:00 PM, the [information officer] could have declined to process the paper Application. Reception would have provided a caution to the Applicant as well if there were longer than usual wait times. If we were aware that it was the Applicant's last day to file, then we would have provided a dated Pink Slip for the client to bring with them for the next day at their appointment if they still wanted to file in person. I do not see a Pink Slip in the file and no audit notes to indicate there was any Pink Slip in documentation. Maybe the client did not communicate to the staff that it was their last day to file.

Upon considering this, I find that the tenant's testimony explaining why he made his claim on November 1, 2019, and not October 31, 2019, is generally supported by the procedures in place at the Burnaby RTB office. I attach little significance to the fact that the tenant testified the cut-off time was 2:00pm rather than 3:00pm. Such a discrepancy would not be unexpected given the intervening months between making the application and it coming to a hearing.

I accept that the tenant may not have advised the information office that it was his final day to make the application, which would account for the lack of a "pink slip" provided to him.

As such, pursuant to section 66 of the Act, I extend the time limit within which the tenant could make his application to November 1, 2019, and therefore find that his application was brought within time.

Tenant's Claim

I find that the tenancy ended on October 31, 2017 and that the tenant provided his forwarding address in writing to the landlord on November 9, 2017.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving the forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

It is not enough for the landlord to allege the tenants caused damage to the rental unit. The landlord must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that she has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenant double the amount of the security deposit ($1,000).

As the tenant has been successful in his application, he is entitled to have his filing fee of $100.00 repaid by the landlord.

Conclusion

Pursuant to sections 38, 65, and 72 of the Act, I order the landlord to pay the tenant $1,100.

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

Dated: March 23, 2020

Residential Tenancy Branch

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