Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRINCESS DAPHNE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on November 20, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on November 19, 2019 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 20, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that on, or about, March 22, 2020, the Landlord's evidence was served to the Tenant, via registered mail. The Tenant stated that the Tenant received the Landlord's evidence a few days ago but the Tenant has not had time to forward that evidence to the Agent for the Tenant.

Pursuant to section 90(a) of the *Residential Tenancy Act (Act*), documents that are served by mail are deemed to have been received by the other party five days after they are mailed. As the Agent for the Tenant is not certain of the exact date the Landlord's evidence was received by the Tenant, I find it reasonable to rely on the deeming provisions of the *Act.* As the Agent for the Landlord estimates that the Landlord's evidence was mailed on March 22, 2020, I find that it is deemed received by the Tenant on March 27, 2020.

I find that the evidence served by the Landlord does not comply Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, as it was not received by the Tenant

at least seven days full days prior to the commencement of the hearing. I therefore refuse to accept the Landlord's evidence package.

In determining that the Landlord's evidence package should be excluded, I was influenced by the Agent for the Tenant's testimony that the Tenant had not had time to forward the evidence to the Agent for the Tenant. As the Agent for the Tenant did not have the evidence at the time of the hearing, an adjournment would be necessary to provide the Agent for the Tenant with time to review the Landlord's evidence, if I admitted the evidence.

In determining that the Landlord's evidence package should be excluded, I was also influenced by the fact the Landlord's evidence relates to the need to clean the rental unit. As the need to clean the rental unit is not relevant to the issues in dispute at these proceedings, I find that the Landlord's evidence is not relevant to this hearing. As such, I find that adjourning the hearing to allow the Agent for the Tenant time to review the Landlord's evidence is not warranted.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Both participants affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

At the hearing the Agent for the Landlord stated that the Landlord submitted evidence to show that the rental unit required cleaning at the end of the tenancy.

Rule 2.1 of the Residential Tenancy Branch Rules of Procedure stipulates to make a claim, a person must complete and submit an Application for Dispute Resolution.

As the Landlord has not yet filed an Application for Dispute Resolution, in which the Landlord claimed for compensation for cleaning the unit, I am unable to consider that claim at these proceedings.

The Landlord is at liberty to file an Application for Dispute Resolution claiming compensation for cleaning the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Agent for the Landlord and the Agent for the Tenant agree that:

- This tenancy began on May 01, 2018;
- The rental unit was vacated on June 30, 2019;
- A security deposit of $550.00 was paid;
- A pet damage deposit of $550.00 was paid;
- A key deposit of $25.00 was paid;
- the Landlord returned $560.00 of the deposits to the Tenant, which the Tenant received on August 27, 2019; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security or pet damage deposit.

The Agent for the Tenant stated that on August 06, 2019 she sent a text message to the Agent for the Landlord, in which she provided a forwarding address for the Tenant.

The Agent for the Landlord stated that she does not recall when she received the text message the Agent for the Tenant sent on August 06, 2019, however she acknowledges receiving it. The Agent for the Landlord stated that on August 19, 2019 she forwarded the text message of August 06, 2019 to the owner of the rental unit.

The parties agree that the $560.00 that was returned to the Tenant in August of 2019 was mailed to the forwarding address provided by the Tenant.

Analysis:

On the basis of the undisputed evidence, I find that the rental unit ended when it was vacated on June 30, 2019.

On the basis of the undisputed testimony of the Agent for the Tenant, I find that a forwarding address for the Tenant was sent to the Agent for the Landlord, via text message, on August 06, 2019.

Although the Agent for the Landlord does not recall precisely when she received the text message that was sent on August 06, 2019, I find it reasonable to conclude that she had received it by August 19, 2019, as that is the day, she forwarded the text message to the owner of the rental unit.

In determining that the Landlord received the Tenant's forwarding address, via text message, I was guided, in part, by the definition provided by the Black's Law Dictionary

Sixth Edition, which defines “writing” as “handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof”. I find that a text message meets the definition of written as defined by Black’s Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Agent for the Landlord acknowledged receiving the text message in which the Tenant’s forwarding address was provided, I find that the Agent for the Landlord was sufficiently served with the Tenant’s forwarding address.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution, and more than 15 days has passed since the tenancy ended and the forwarding address was received, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit.

As the Landlord retained a pet damage deposit of $550.00 and a security deposit of $550.00 at the end of the tenancy, none of which had been returned by the end of the tenancy, I find that the Landlord must pay double these amounts, which is $2,200.00. Section 38(6) of the *Act* does not entitle a tenant to double the amount of a deposit made for a key and, as such, the unreturned key deposit has not been doubled.

As the Landlord has not filed an Application for Dispute Resolution to establish a right to retain the $25.00 key deposit, I find that this deposit must be returned to the Tenant.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $2,350.00, which is double the security/pet damage deposit, in the amount of $2,200.00, $25.00 for the return of the key deposit, and $100.00 as compensation for the cost of filing this Application for Dispute Resolution. As the Landlord returned $560.00 of the deposits in August of 2019, I find that the monetary claim must be reduced by $560.00.

On the basis of these calculations, I grant the Tenant a monetary Order for $1,765.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 03, 2020

Residential Tenancy Branch