Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought return of their security deposit.

The Tenants originally applied by way of Direct Request proceeding pursuant to section 38.1 of the *Residential Tenancy Act* (the *"Act"*). The Adjudicator considering that request determined that a participatory hearing was necessary as the Tenants named the property owner on their Application, yet the tenancy agreement indicated the Landlord was a company.

The participatory hearing was scheduled for teleconference before me at 9:30 a.m. on June 8, 2020. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 9:48 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant, A.T., testified that they served the Landlord with the Notice of Hearing and the Application on April 24, 2020 by email.

By Director's Order dated March 30, 2020 Notice of a hearing may be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The Tenants confirmed that they communicated by email with the Landlord in January and February 2020; copies of such communication were provided in evidence before me. As such, I find that the Landlord was deemed served with Notice of this participatory hearing April 27, 2020, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenants and relevant to the issues and findings in this matter are described in this Decision.

Naming of the Landlord

The residential tenancy agreement filed in evidence named the Tenants and a property management company. The Tenant, A.T., stated that that they did not serve the property management company,as the property management company informed the Tenants in early January 2020 that they had been fired as property managers by the Landlord, C.B.

A.T. confirmed that they then had direct communications with the Landlord, C.B., regarding the tenancy. The Tenants also paid rent directly to C.B. through electronic transfer. The Tenants provided copies of this communication in evidence.

I am satisfied, based on the Tenant's testimony as well as the evidence before me, that the property management company named on the tenancy agreement is no longer representing the property owners and that the property owner, C.B., assumed responsibility for the tenancy in January of 2020. As such, I find the Tenants correctly named C.B. as the Landlord.

Issues to be Decided

1. Are the Tenants entitled to return of their security deposit and pet damage deposit?

2. Should the Tenants recover the filing fee paid for their Application?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which indicated this one-year fixed term tenancy began May 1, 2019. Monthly rent was $1,250.00 and the Tenants paid $625.00 as a security deposit and $625.00 as a pet deposit.

The Tenants moved from the rental unit on February 15, 2020. Documentary evidence filed by the Tenants confirms that they asked the Landlord numerous times to do a move out inspection and the Landlord refused or neglected to do the inspection.

A.T. testified that the Tenants left their forwarding address on a handwritten signed letter which they left at the rental unit when they moved out. The Tenant also sent a follow up email to the Landlords on February 16, 2020 providing their forwarding address; a copy of this email was provided in evidence before me.

A.T. confirmed the Landlord did not return their funds, nor did the Landlord make an application for dispute resolution. A.T. further confirmed they did not authorize the Landlord to retain any of their security or pet damage deposit.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

> **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,
>
> 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) 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.

Based on the above, the Tenants' undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenants forwarding address in writing on February 15, 2020, the date the Tenants vacated the rental unit. I am also satisfied the Tenants ensured the Landlord had their forwarding address by sending the address to the Landlord by email. The documentary evidence before me confirms that the Landlord

was communicating about the end of the tenancy with the Tenants by email such that I find the Landlord received the Tenants' forwarding address and was aware the Tenants sought return of their security and pet damage deposit.

I find the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

I also find the Landlord failed to perform a move out inspection. By failing to perform the outgoing condition inspection report in accordance with the Act, the Landlord also extinguished their right to claim against the security and pet damage deposits for damages, pursuant to section 36(2) of the *Act*.

Although the Tenants paid the security and pet damage deposit to the property management company, when the Landlord discontinued the property management company's services and assumed management of the rental unit, the Landlord became responsible for returning these funds to the Tenants.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlord believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. I find the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **$2,600.00**, comprised of double the security and pet damage deposit ($625.00 + $625.00 = $1,250.00 x 2 = $2,500.00) and the $100.00 fee for filing this Application.

Conclusion

The Tenants' application for return of double their security and pet damage deposit as well as is granted. In furtherance of this the Tenants are given a formal Monetary Order in the amount of **$2,600.00.** The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: June 08, 2020

Residential Tenancy Branch