Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlords stated that the tenants were served with the notice of hearing package via email on April 17, 2020. The tenants disputed this claim stating that no such email was received. The landlord was asked for any type of proof of service that the notice of hearing package was served via email on April 17, 2020. The landlords stated that he needed to look up the proof of service on his mobile phone and that he had hundreds of emails on the phone. The hearing was paused for a few minutes to allow the landlord to locate the proof of service. After a few minutes the landlords stated that he was unable to locate the information as there were hundreds of emails to look through on his phone

and he was not prepared for this question. The landlord was asked if he had provided this same evidence for proof of service to the Residential Tenancy Branch, but the landlord stated that he did not know. A cursory review of the landlord's submitted documentary evidence did not reveal any emails dated April 17, 2020.

I note during the hearing the landlords displayed a lack of understanding in some of the introductory questions regarding service. The landlords were asked if he had an issue understanding the questions. At one point the landlords were very difficult to hear as the landlords confirmed that he was on a speakerphone. The Arbitrator requested that the landlords turn off the speakerphone feature. At that point the communication between parties became much clearer. The landlords were asked if he had someone else available to interpret/assist him that would make things easier. The landlords stated that "no" he understood perfectly and that he stressed that he was a previous government worker and had no issues. The hearing proceeded on this basis.

During the hearing the landlords confirmed that he had misspelled the tenant's last name with a "S" instead of a "Z", D.Z. The tenant, D.Z. confirmed the proper spelling of his last name as per his application for dispute. The landlords' application shall be amended to reflect the correct spelling of the tenant's last name.

The landlords made repeated arguments throughout the hearing that the tenant was not providing truthful information. The landlords stated that if given some time he could locate the proof of service. The landlords did not provide any description on what the proof of service was. Both parties were informed that proper preparation for the hearing was the responsibility of each party. The landlord was notified that an adjournment to allow him time to search for evidence as proof of service was denied.

Although the landlords have claimed to have served the tenants via email on April 17, 2020, the tenants have argued that no such package was served. The landlord was unable to provide any supporting evidence that the tenants were properly served. As such, I find that the landlords have failed to provide sufficient evidence that the tenants were properly served with the landlords' notice of hearing package as per section 89 of the Act. After 30 minutes into the hearing the landlords' application was dismissed with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period.

Both parties confirmed that the tenants served the landlords with their notice of hearing package via Canada Post Registered Mail on April 21, 2020. Both parties also

confirmed the tenants served the landlords with the 6 submitted documentary evidence files in the same Canada Post Registered Mail on April 21, 2020.

At the conclusion of the hearing the tenants stated that they have since moved after filing their application for dispute and have provided a new mailing address. The Residential Tenancy Branch File shall be updated to reflect this change.

I also note for the record that the landlords made repeated comments that the Arbitrator was not “fair” and acting “rude” by not allowing the landlords an adjournment to provide evidence of proof of service for the landlords’ claim. Extensive time was spent giving the landlords an opportunity to provide any evidence of proof of service of the landlord’s hearing package.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant’s claim and the landlord’s cross claim and my findings around each are set out below.

Both parties provided undisputed affirmed testimony that the landlords currently hold the $1,250.00 security deposit that was paid by the tenants. Both parties agreed that the tenancy ended on March 31, 2020.

The tenants stated that the landlords were provided with the tenants’ forwarding address in writing on March 31, 2020. The landlords disputed this claim but confirmed that the tenants’ forwarding address was received within 7-14 days after the end of tenancy on March 31, 2020. The landlords stated that he could not remember which date.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in

writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of both parties that the landlords currently hold a $1,250.00 security deposit. I also accept the undisputed affirmed evidence of both parties that the tenants provided their forwarding address in writing for return of the security deposit. Although the tenants claim that this was given on March 31, 2020, the landlords have argued that it was received, but later between 7-14 days after the end of tenancy on March 31, 2020. I find that as there is no dispute on the tenants providing their forwarding address in writing I deem the landlord served on April 15, 2020, 15 days after the end of tenancy on March 31, 2020.

I find pursuant to section 38(6) (a) the landlord having failed to comply with subsection (1) may not make a claim against the security deposit. The landlords original application for damage, for money owed or compensation, recovery of the filing fee and to be authorized to offset that claim against a security deposit held was dismissed as the landlords were found to have failed to serve the tenants with the notice of hearing package.

The tenants are entitled to return of the original $1,250.00 security deposit.

I also find pursuant to section 38 (6) (b), the landlords have failed to comply with subsection (1) must pay an amount equal to the $1,250.00 security deposit.
The tenants have established a total monetary claim of $2,500.00.

I also order that the tenants are entitled to recovery of the $100.00 filing fee.

Conclusion

The tenants are granted a monetary order for $2,600.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division 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 *Residential Tenancy Act*.

Dated: August 21, 2020