Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S FFL
For the Tenant: MNSDB-DR FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order of $1,354.00 for damage to the unit, site or property, for authorization to retain the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order of $2,340.00 for double the return of their security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenants AP and DP (tenants) attended the teleconference hearing which began promptly at 1:30 p.m. Pacific Time on Monday, November 2, 2020 by conference call as per the Notice of a Dispute Resolution Hearing provided to both parties. The line remained open while the phone system was monitored for 45 minutes and the only participants who called into the hearing during this time were the agents.

After the 10-minute waiting period, the landlord's application was **dismissed in full**, **without leave to reapply**.

The hearing continued with consideration of the tenants' application. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated July 20, 2020 (Notice of Hearing), the application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on July 21, 2020. The tenants provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the

name of the landlord and their home address. According to the online registered mail website information the registered mail package was delivered on July 22, 2020. As a result, I find that the landlord was served as of July 22, 2020, which is the date listed on the Canada Post registered mail tracking website. Based on the above, I am satisfied the landlord has been sufficiently served in accordance with the Act.

Given the above, the hearing continued without the landlord present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Firstly, as tenant AP was the only tenant listed on the tenancy agreement, I have removed the name of DP from the tenants' application pursuant to section 64(3)(c) of the Act.

Secondly, the tenant confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord provided their email address in their application, the decision will be emailed to the landlord also.

Issues to be Decided

- Is the tenant entitled to a monetary order under the Act and if so, in what amount?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2018 and was scheduled to revert to a month to month tenancy after June 30, 2018. Monthly rent of $1,300.00 was due on the first day of each month. The tenant paid a security deposit of $650.00 and a pet damage deposit of $650.00 for a total of $1,300.00 in combined deposits (combined deposits) at the start of the tenancy, which the landlord continues to hold.

The tenant stated that the landlord lived in the upstairs of the rental home. The tenant stated that the rental unit was rented on behalf of their son, TP (son). The tenant testified that their son provided written notice to the landlord dated either April 29 or 30, 2020 that they would be vacating by May 31, 2020.

The tenant stated that the landlord was given permission to retain $200.00 from their combined deposits for “window casing/screen” due to the dog. The amount of $200.00 is comprised of $75.00 each for two screens, plus $50.00 for labour. The tenant also stated that the landlord was given permission to retain $160.00 for fridge drawers and that the total deductions agreed to by the tenant was $360.00, leaving a combined deposits balance owing by the landlord to the tenant in the amount of **$940.00.**

The tenant testified that the landlord was not given permission to retain anything more than the $360.00 amount described above. The tenant testified that the written forwarding address was served on the landlord on June 11, 2020 by email, which was permitted on June 11, 2020, based on the Director’s Order that as in effect at that time related to email service during the COVID-19 State of Emergency in British Columbia. Based on the deemed service provisions, I find the landlord was deemed served 3 days after the email was sent, which was June 14, 2020. The tenant filed their claim for double the combined deposits on July 9, 2020 and testified that the landlord has failed to return any portion of their security deposit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I accept the tenant’s undisputed testimony that they surrendered $360.00 from their combined deposits, which results in a combined deposits balance of **$940.00.**

Secondly, I accept the tenant’s undisputed testimony that the tenant did not give the landlord permission to retain any amount above $360.00 from the combined deposits, and that the tenant’s written forwarding address was sent by email on June 11, 2020 to the landlord. Therefore, I find the landlord had 15 days from June 14, 2020 to return the remaining $940.00 to the tenant, which I find the landlord failed to do. I also find that there is no evidence before me that the landlord filed a claim within 15 days of June 14, 2020, claiming against the $940.00 combined deposit balance.

Section 38 of the Act applies and states in part:

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.

(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.

(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.

[Emphasis added]

Based on the above, I find the landlord must pay the tenant double the $940.00 amount, which is **1,880.00** as I find the landlord had no authority to retain the $940.00 combined deposit balance under the Act.

As the tenant's application was successful, I grant the tenant the recovery of the **$100.00** filing fee and pursuant to section 72 of the Act. Given the above, I find the tenant has established a total monetary claim of **$1,980.00,** comprised of double the combined deposit and the filing fee. The tenant is granted a monetary order pursuant to section 67 of the Act in the amount of **$1,980.00.**

I caution the landlord not to breach section 38 of the Act in the future.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is fully successful.

The tenant is granted a monetary order pursuant to section 67 of the Act in the amount of $1,980.00. Should the tenant require enforcement of the monetary order, the tenant must first serve the landlord with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court. The landlord may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 4, 2020

Residential Tenancy Branch