Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

The tenant applied for compensation under sections 38 and 67 of the *Residential Tenancy Act* ("Act"), and she seeks to recover the cost of the application filing fee.

The tenant attended the hearing on February 9, 2021, which was held by teleconference. The landlord did not attend the hearing.

The tenant testified that she served the Notice of Dispute Resolution Proceeding on the landlord by way of Canada Post registered mail on November 3, 2020. The registered mail tracking number was read out to me (and is referenced on the cover page of this decision) and the Canada Post tracking website shows that the package was delivered on November 13, 2020. Further, I note that the landlord uploaded several documents into the RTB's dispute management system on February 2, 2020.

Based on the above-noted oral and documentary evidence, and information, I find that the landlord was served with the Notice of Dispute Resolution Proceeding in compliance with the Act and that he was fully aware of the hearing.

Issues

Is the tenant entitled to compensation?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred by the tenant, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below. As the landlord failed to attend the hearing, I need not consider any documentation that he may have submitted.

The tenancy began on September 28, 2014. The parties to the tenancy agreement were the tenant and a now-former landlord (the "old landlord"). Monthly rent was $1,500.00 and the tenant paid a security deposit of $750.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On July 2, 2020 the residential property, which was the rental unit, transferred ownership between the old landlord and the new landlord ("landlord" or "new landlord"). A copy of a buyers' statement of adjustments, which referenced the July 2, 2020 possession date, was in evidence.

Also, on that date of July 2, 2020 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant vacated the rental unit on September 16 and a move out inspection occurred on September 19, 2020.

On September 27, 2020 the tenant sent a text message to the landlord at 6:28 PM, in which she provided her forwarding address. A screen capture of the text message was in evidence, and a previous text message (immediately preceding the tenant's message) from the landlord was included in that exchange. A few weeks later, on October 13, 2020, the tenant sent the landlord an email and a written letter in which she again included her forwarding address.

The landlord deducted – without the tenant's written agreement – $425.00 of the tenant's security deposit. He returned $325.00 of the security deposit to the tenant on October 30, 2020.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for Security Deposit

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> 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.

In this dispute, the tenancy can be considered, I conclude, to have ended on September 19, 2020 when the tenant handed back the keys to the landlord. I find that the landlord received the tenant's forwarding address in writing, by way of a text message, on September 28, 2020. As such, the landlord had until October 13, 2020 in which he was required to either repay the entire security deposit or make an application for dispute resolution. He did neither. Moreover, the landlord did not obtain the tenant's written agreement to retain $425.00 of the security deposit.

2. Doubling Provision

Next, I must apply section 38(6) of the Act which states the following:

(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.

In this dispute, the landlord failed to comply with subsection 38(1) of the Act and must therefore pay the tenant double the amount of the security deposit, minus the $325.00 portion that he eventually returned on October 30, 2020.

Thus, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for compensation in the amount of $1,175.00 in respect of the security deposit.

3. Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful in her application, I grant her claim for the $100.00 filing fee. This amount is added to the above-noted award of $1,175.00 for a total monetary award of $1,275.00.

A monetary order in the amount of $1,275.00 is issued in conjunction with this Decision, to the tenant.

Conclusion

The tenant's application is granted.

I hereby grant the tenant a monetary order in the amount of $1,275.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed within 15 days of being served the order, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 9, 2021

Residential Tenancy Branch