Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNSDS-DR, FFL, FFT

Introduction:

This hearing was convened in response to cross applications.

On November 17, 2020 the Management Company representing the Landlord during the tenancy (hereinafter referred to as the Management Company) filed an Application for Dispute Resolution, in which they applied for a monetary Order for damage to the rental unit, to retain the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that he is not aware of the Application for Dispute Resolution filed by the Management Company. As such, he is not aware of the claims being made in the Application for Dispute Resolution and he does not know if the Application for Dispute Resolution or any of the associated evidence was served to the Tenant.

The Tenant stated that he was not served with the Application for Dispute Resolution filed by the Management Company.

On December 10, 2020 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on December 17, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in December of 2020 were personally delivered to the business office of the Management Company. The Landlord stated that these documents were provided to him by the Management Company many months ago. As the Landlord acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

On February 23, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally delivered to the Management Company on February 23, 2021. The Landlord stated that the Management Company forwarded these documents to him by email but he was unable to open the attached documents.

As the Landlord was unable to view this evidence, the parties were advised that the hearing would proceed; that I would not view the documents in the February evidence package; and that the Tenant could discuss the documents served in that evidence package. The parties were advised that I would not accept the February evidence package as evidence for these proceedings unless the Tenant requested an adjournment for the purposes of re-serving the evidence in that package. At the conclusion of the hearing the Tenant was asked if he wished an adjournment for the purposes of re-serving evidence, and he stated that he did not. As the Landlord could not view the documents contained in this evidence package and the Tenant did not request an adjournment for the purposes of re-serving this evidence, the documents in the February evidence package were not accepted as evidence for these proceedings.

The participants were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided:

Should the security deposit be retained by the Landlord or returned to the Tenant?
Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence:

The Landlord and the Tenant stated that:

- the tenancy began on November 01, 2019;
- a security deposit of $1,275.00 was paid;
- this tenancy ended on October 29, 2020;
- the Tenant provided a forwarding address to the Management Company, in writing, on November 17, 2020;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The Tenant stated that the Management Company completed a condition inspection report at the start of the tenancy and at the end of the tenancy. The Landlord stated that he does not know if condition inspection reports were completed, as that would have been done by the Management Company.

Analysis:

As the Landlord was unable to declare if/when the Application for Dispute Resolution filed by the Management Company was served to the Tenant and the Tenant stated that he was not served with that Application for Dispute Resolution, I find that the Landlord has failed to establish that the Tenant was served with the Landlord's Application for Dispute Resolution.

As the Landlord has failed to establish that the Landlord's Application for Dispute Resolution was served to the Tenant, I find it would be unfair to the Tenant to consider the Landlord's claim for compensation for damage to the rental unit at these proceedings. I dismiss the Landlord's claim for compensation for damage to the rental unit, with leave to reapply. The application to retain the security deposit and to recover the fee for filing the Landlord's Application for Dispute Resolution is dismissed, without leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for damage to the unit.

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. I find that the Landlord complied with section 38(1) of the *Act*, as the Management Company filed an Application for Dispute Resolution on the same date the Company received the Tenant's forwarding address, in writing.

I find that the Landlord failed to establish a right to retain the Tenant's security deposit. I therefore find that the 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 Landlord's application for compensation for damage to the rental unit is dismissed, with leave to reapply. The Landlord's application to retain the security deposit and to

recover the fee for filing the Landlord's Application for Dispute Resolution is dismissed, without leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for damage to the unit.

The Tenant has established a monetary claim of $1,375.00, which includes a return of the security deposit of $1,275.00 and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: March 11, 2021

Residential Tenancy Branch