Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenant seeks the return of double the amount of their security deposit pursuant to section 38(6)(b) of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the cost of the filing fee pursuant to section 72 of the Act.

The landlord, and an agent for the tenant (to whom I hereafter refer as "the tenant"), attended the hearing on June 1, 2021. The parties were advised of Rule 6.11 of the *Rules of Procedure* regarding the prohibition on recording the hearing.

Preliminary Issue: Service of Evidence

The tenant acknowledged serving their evidence on the landlord in January and February 2021.

The landlord's sole evidence was a submitted a five-page Word document – a written submission of sorts – that was provided to the Residential Tenancy Branch on May 21, 2021. However, the landlord explained that they had not served a copy of this letter on the tenant or their agent. Because parties are required to serve copies of any evidence they wish to rely on, to the opposing side, as per Rule 3.15 of the *Rules of Procedure*, I am unable accept or consider the landlord's Word document as evidence. Finally, while the landlord frequently referred to having evidence of various conversations in their WhatsApp messaging service, no copies of these messages were submitted into evidence and are not before me to consider.

Issues

1. Is the tenant entitled to the return of double the amount of their security deposit?
2. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began July 1, 2013 and ended December 31, 2019. Monthly rent was $1,900.00 and the tenants paid a security deposit of $900.00. A copy of a written *Residential Tenancy Agreement* was submitted into evidence. I note that while there are two tenants listed on the tenancy agreement, only one of those tenants brought an application for the return of the security deposit; the tenant's agent explained that the tenants are his father and mother.

The tenant gave evidence that they vacated the rental unit on December 29, 2019. On February 1, 2020, the tenants gave a document, on which their forwarding address was written, to the landlord. A photograph of this document was in evidence. Months passed, but no return of the security deposit was forthcoming. The landlord apparently had various excuses for not returning it. With no prospect of the security deposit being returned, the tenants made the decision to file an application for dispute resolution in early 2021. An application for dispute resolution was submitted on January 10, 2021.

In answer to two questions I asked the tenant, he confirmed that (1) at no time did the tenants provide written consent for the landlord to keep the security deposit, and (2) the tenants are not aware of any claim made against them by the landlord.

The landlord testified that the RTB-41 proof of service document contained a forged signature. In reviewing this document, however, neither of the two signatures appear to match any other signatures contained in other documents. However, if the landlord meant to refer to the document purportedly given to them on February 1, 2020, the landlord's signature appears above her printed name. (At this point, I should say that the landlord's signature on the forwarding address document only roughly matches her signature on the last page of the tenancy agreement. I will return to this point later.)

According to the landlord, the tenants were not willing to provide their forwarding address until they did so, via WhatsApp, on September 7, 2020.

Both parties provided brief rebuttal which largely reiterated their respective positions regarding the forwarding address document, and, whether the signature was forged.

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.

A. Claim for Security Deposit

Section 38(1) of the Act states the following about a landlord's obligations 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
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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.

The tenant argued that the landlord received the tenants' forwarding address in writing on February 1, 2020. The landlord disputes this, instead arguing that they only received the forwarding address in writing (electronically through WhatsApp) on September 7, 2020. While I am no forensic graphologist, the landlord's signature as it appears on the forwarding address document of February 1 does not appear to be anything but a rough likeness of the landlord's signature as it appears on the tenancy agreement.

However, this does not mean that the signature was forged; there is, quite simply, no evidence of fraud. Indeed, there are many possible reasons for the slightly mismatched signatures, including where and in what manner the landlord may have allegedly signed the document. Leaving all that aside, however, and regardless of whether the landlord received the tenants' forwarding address in writing on February 1 or on September 7, the simple fact remains: the landlord received the tenants' forwarding address in writing and neither repaid the security deposit nor made an application for dispute resolution claiming against the security deposit within fifteen days.

Thus, taking into consideration all the 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 their claim that the landlord did not repay the security deposit or file an application for dispute resolution within 15 days of receiving the tenants' forwarding address.

Doubling Provision

The tenant has applied for a doubled amount to be returned, pursuant to section 38(6) of the Act, which states as follows:

> If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the evidence before me, I find that the landlord failed to comply with subsection 38(1) of the Act. There is no evidence before me to find that the landlord had any legal right to simply keep the security deposit, either after February 16 or September 22 (that is, 15 days after whichever date they actually received the tenants' forwarding address).

As such, pursuant to section 38(6)(b) of the Act, I find that the landlord must pay the tenant double the amount of the security deposit in the amount of $1,800.00.

B. 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 their application, I grant their claim for reimbursement of the $100.00 filing fee.

In total, $1,900.00 is awarded to the tenant. A monetary order for this amount is issued to the tenant in conjunction with this decision. The tenant or their agent must serve a copy of the monetary order on the landlord in order for the order to be enforceable in small claims court.

Conclusion

I hereby grant the tenant's application.

The tenant is granted a monetary order in the amount of $1,900.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed, then the tenant may then file and enforce the order in the Provincial Court of British Columbia.

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

Dated: June 2, 2021

Residential Tenancy Branch