Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FFT

Introduction

The tenant seeks the return of their security deposit pursuant to 38 of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of their filing fee.

The tenant, an interpreter for the tenant, the landlord, and the landlord's wife attended the hearing. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

It should be noted that while the tenant's application included the names of two tenants, only the name of tenant who appears on the written tenancy agreement is included in the style of cause of this decision.

Issues

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

Background and Evidence

The tenancy began on November 1, 2019. The tenancy ended on October 31, 2020. Monthly rent was $2,250.00. The tenant paid a $2,250.00 security deposit. A copy of the written tenancy agreement was in evidence.

The tenant gave evidence that while most of the security deposit was returned to him, there is an outstanding balance of $980.00. He seeks the return of this amount, plus the $100.00 for the cost of the dispute resolution application.

The tenant further gave evidence that he did not give the landlord permission to retain the $980.00, and that there was no condition inspection conducted. The matter was handled in a manner that was "unprofessional and random."

The landlord testified that he returned $1,280.00 of the security deposit. Thus, $970.00 is the amount that was not returned. He also testified that the security deposit was retained to pay for repairs for which he has receipts. As for the amount of the security deposit (the tenant's interpreter pointed out that this was in excess of the ½ of the rent amount permitted under the Act), the landlord explained that he dealt with the tenant's agent who agreed, on behalf of the tenant, to pay a full month's amount of rent as a deposit.

Submitted into evidence by the tenant were copies of text messages and email conversations. Many of the text messages are of the tenant asking the landlord to return the security deposit. The landlord did not submit any documentary evidence.

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.

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
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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.

In this dispute, it is my finding that while the tenant did not provide any evidence of having provided a residential address to which the landlord could have sent the security deposit, it is however my finding that the tenant's email address (which the landlord clearly had) constitutes the "tenant's forwarding address in writing" for the purposes of section 38(1)(b) of the Act.

The tenancy ended on October 31, 2020, and the tenant contacted the landlord in July of 2021 about returning the security deposit. It is reasonable to infer that the landlord had the tenant's forwarding address well before the tenant's follow-up more than eight months after the tenancy ended. There is also, it is noted, no application for dispute resolution that the landlord made claiming against the security deposit. There is no proof that the tenant agreed to *any* deduction from the security deposit. And the landlord did not submit any documentary evidence that might have showed the tenant agreeing to the landlord retaining $980.00. Last, there is no evidence that the landlord completed a condition inspection report, which is required when making a claim against a security deposit.

In short, the landlord had, and has, no legal authority to retain the balance of the tenant's security deposit of $980.00.

It is therefore my finding that, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, the tenant has met their onus of establishing that they are entitled to the return of the balance of the security deposit.

Next, regardless of whether an applicant tenant requests it, 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
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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.

In this case, having found that the landlord did not comply with subsection 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit that has not been returned, for a total of $1,960.00.

As the tenant was successful in their application, they are entitled to recover the cost of the application filing fee in the amount of $100.00. In total, then, the tenant is awarded $2,060.00.

Conclusion

The application is granted.

The tenant is granted a monetary order in the amount of $2,060.00. A copy of the monetary order, which is issued to the tenant in conjunction with this decision, must be served by the tenant on the landlord.

If the landlord fails to pay the tenant the amount owed within 15 days of receiving a copy of either this decision or the monetary order, 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: January 27, 2022

Residential Tenancy Branch