Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALPI CONSTRUCTION INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for $2,850.00 for the return of double their security deposit and pet damage deposit, plus the recovery of the cost of the filing fee.

The tenant, the owner, MA (landlord), and two agents for the landlord, MM and SM (agents) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their relevant documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Furthermore, the name of the landlord was corrected to API, pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit and pet damage deposits under the Act?
- If yes, Is the tenant also 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 December 18, 2017 and reverted to a month-to-month tenancy after December 31, 2018. The parties confirmed that the tenant paid a security deposit of $687.50 and a pet damage deposit of $687.50, which is $1,375.00 in combined deposits (Combined Deposits) at the start of the tenancy.

The parties agreed that at the end of the tenancy on November 30, 2020, the tenant did not agree in writing to any deductions from their Combined Deposits. The parties confirmed that the tenant provided their written forwarding address on the Move Out Condition Inspection Report dated November 30, 2020. The landlord submitted a copy of a letter dated December 9, 2020 (December 9, 2020 Letter), indicating that $955.00 of the $1,375.00 Combined Deposits was being returned “less cost of repairs” in the amount of $420.00, which was deducted without the written permission of the tenant.

The agents confirmed that the landlord has not filed an application to claims towards the tenant’s Combined Deposits since the tenancy ended on November 30, 2020.

There is no dispute that the cheque that accompanied the December 9, 2020 Letter was in the amount of $955.00 and that it was mailed via registered mail and was lost in the mail.

The parties agreed that on January 9, 2021, a cheque for the full amount of $1,375.00 was issued to the tenant and the tenant cashed the cheque for $1,375.00. The tenant testified that they are not waiving their right to double the Combined Deposits if they are entitled to such under the Act.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

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.

(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]

Given the above, I find the landlord had no right under the Act to retain the $420.00 amount from the first cheque issued to the tenant in the amount of $955.00. While I afford very little weight to the fact that the first cheque was lost in the mail, the crucial fact is that the landlord failed to return the full Combined Deposits or make a claim within 15 days of November 30, 2020, which is the date the tenancy ended and the date the parties confirmed the tenant provided their written forwarding address to the landlord. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposit from the later of the end of tenancy or the written forwarding address. Therefore, I find the landlord had until December 15, 2021, to return the tenant's Combined Deposits of $1,375.00 or file a claim against the Combined Deposits. I find the landlord failed to do either.

There is no dispute that the landlord eventually issued a second cheque for $1,375.00 dated January 9, 2021, and that the tenant received that cheque and deposited it. I find that the second cheque was issued well beyond the 15-day timeline of December 15, 2021, noted above, and therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their $1.375.00 in Combined Deposits for a total of **$2,750.00**. I note that the tenant's security deposit has accrued $0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above.

As the tenant paid a filing fee of $100.00 and their application was successful, I grant the tenant **$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of $2,850.00, comprised of $2,750.00 for double the Combined Deposits, plus

the $100.00 filing fee. I deduct from that amount, the $1,375.00 amount the tenant has already cashed from the second cheque, and I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **$1,475.00**.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of $2,850.00 as indicated above. After deducting the $1,375.00 second cheque that was cashed by the tenant, the tenant is granted a monetary order of $1,475.00.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. If the tenant requires enforcement of the monetary order, the tenant must first serve the landlord with the monetary order along with a demand for payment letter. The tenant may then file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

The landlord is cautioned that they can be held liable for all costs related to the enforcement of the monetary order.

This decision is final and binding on the parties, unless 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: February 23, 2022

Residential Tenancy Branch