Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: MNRT MNSD MNDCT

Introduction

The tenant seeks compensation under sections 38, 67, and 72 of the *Residential Tenancy Act* ("Act").

Attending the hearing was the tenant, his case manager, and a representative for the landlord. It is noted that the case manager's name was included as a tenant on the application. However, she confirmed that she was not a tenant, and her name is removed from the style of cause (cover page) of this decision. Last, I note that the case manager became disconnected from the hearing at 1:57 PM, while I was explaining when the parties could expect to receive this decision. The hearing ended at 1:58 PM.

No service issues were raised, the parties were affirmed under oath, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained.

Preliminary Issue: No Supporting Documentary Evidence for Two Claims

Two of the claims for compensation were for moving costs of $300.00 and for cleaning costs of $250.00. Both claims were made due to a purported breach of the Act by the landlord. However, the landlord disputed these claims and argued that there is no supporting documentary evidence, such as a receipt or an invoice, for these two claims.

Section 7 of the Act and *Residential Tenancy Policy Guideline 16 - Compensation for Damage or Loss* (version August 2016) require that a party seeking compensation present compelling evidence of the value of the loss in question. Compelling, supporting evidence includes copies of receipts or invoices. In this application, no supporting documentary evidence establishing the value of these two claims were provided. As such, it is my finding that these two claims for compensation cannot be proven and will therefore be dismissed.

Issues

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

Background and Evidence

The tenancy began on April 1, 2020 and ended on September 30, 2020. The tenant paid a security deposit of $950.00 which has not been returned to him. He testified that he provided his forwarding address to the landlord upon vacating the rental unit on September 30. To date, the security deposit has not been returned, the tenant testified.

The landlord's representative testified that the tenant provided their forwarding address on the condition inspection report at the end of the tenancy. The representative conducted the move out inspection.

However, the representative had been advised by the landlord's staff that the tenant, in moving out on September 30, was breaching a one year fixed-term tenancy. The tenancy was supposed to end on March 31, 2021. As such, the landlord (though not necessarily the representative himself) decided to retain the tenant's security deposit in response to the tenant's breaking of the fixed-term tenancy.

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.

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 landlord had the tenant's forwarding address in writing on September 30, 2020. There is no evidence before me, and neither party testified about it being the case, that the landlord either returned the tenant's security deposit or made an application for dispute resolution within 15 days of September 30, 2020. There is also no evidence before me to find that the tenant agreed in writing for the landlord to retain the security deposit.

Last, while the tenant may have breached the tenancy agreement (and I make no finding of law or fact on this particular issue), a *prima facie* breach does not give the landlord the legal authority to unilaterally retain a tenant's security deposit without a tenant's written permission.

Doubling Provision

Next, having found that the landlord breached section 38(1) of the Act by failing to either return the security deposit or make an application for dispute resolution, I must now consider 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.

Having found that the landlord did not comply with subsection 38(1) of the Act, it is my finding that the landlord is not entitled to make any claim against the security deposit and that the landlord must pay the tenant double the amount of the security deposit in the amount of $1,900.00.

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 his application, I therefore grant his claim for reimbursement of the $100.00 filing fee.

Pursuant to section 67 of the Act the landlord is ordered to pay the tenant a total of $2,000.00. The tenant is granted a monetary order in conjunction with this decision. Should the landlord not pay the tenant the above-noted amount within 15 days of receiving a copy of this decision then the tenant must serve a copy of the monetary order on the landlord and may enforce the order in the Provincial Court of British Columbia.

Conclusion

The application is granted, in part.

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

Dated: February 15, 2022

Residential Tenancy Branch