Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Issue Codes: FFT, MNSDB-DR

Introduction

In this application, the tenant seeks to have her security and pet damage deposits returned that the landlord has retained, pursuant to subsections 38(1)(c), 38(6)(b), and 67 of the *Residential Tenancy Act* ("Act"). In addition, the tenant requests that the landlord pay for the cost of the application filing fee, pursuant to section 72 of the Act.

The tenant initially applied for the doubled return of their security deposit by way of direct request application on November 8, 2021. However, due to a few discrepancies contained within the application—inconsistencies which were resolved in this hearing—an adjudicator ordered that the tenant's application be considered at a participatory hearing. (See Interim Decision, dated December 16, 2021.)

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

A dispute resolution hearing was convened on Thursday, May 26, 2022 at 1:30 PM. The tenant attended the hearing while the landlord did not.

The tenant gave sworn testimony that she served the Notice of Dispute Resolution Proceeding on the landlord by way of Canada Post registered mail on December 16, 2021. A copy of the Canada Post receipt and tracking number sticker were in evidence. Canada Post's tracking website indicated that the package was received and signed for by the landlord (D.T.) on December 29, 2021. Based on this sworn, undisputed evidence, it is my finding that the landlord was served with the required Notice necessary for him to fully participate in the dispute resolution process.

Issue

1. Is the tenant entitled to the return, and doubling, 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 September 1, 2018 and ended July 31, 2021. Rent was $1,410.00, and the tenant paid a $687.50 security deposit and a $300.00 pet damage deposit. The particulars of the tenant's application are as follows:

> I want double my security deposit returned that the landlord is holding without cause. (See paper application) I signed and filled out my forwarding address on the move-out inspection report in [landlord's] presence on August 1, 2021 [*sic*]. I received a cheque dated October 2, 2021 for the late return of damage and pet deposit from Cerco Developments on October 11, 2021.

In other words, the landlord ultimately returned the tenant's security and pet damage deposits, but he did not do so in accordance with the Act. The tenant therefore seeks the *doubled* amount of the security and pet damage deposits, in the amount of $987.50.

During the hearing, the tenant testified that she gave her forwarding address to the landlord in writing on July 31, 2021. Her application contained a small error indicating that the end of tenancy was August 1, 2021, but she testified that she moved out of the rental unit on July 30. The landlord had completed the Condition Inspection Report before she had an opportunity to complete the Report in his presence. In any event, she later met with the landlord, and it was then, on July 31, that she wrote down her forwarding address. The landlord eventually returned the security and pet damage deposits on October 11, 2021, more than two months after the tenancy had ended.

Additionally submitted into evidence by the tenant were the following: (1) a copy of the tenant's application for dispute resolution; (2) the tenancy agreement; (3) a copy of a Condition Inspection Report, signed by both parties at the start and end of the tenancy, and included was the tenant's forwarding address; (4) a copy of a cheque dated October 2, 2021 from Cerco Developments Inc. as the payor and the tenant as the payee., in the amount of $987.50. (While Cerco Developments Inc. appears to be the property owner, and potentially the landlord, the respondent D.T. is listed as the landlord on the written Residential Tenancy Agreement.)

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 that

> 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, the tenancy ended, and the landlord received the tenant's forwarding address, on July 31, 2021. Therefore, the landlord was required to either repay the full security and pet damage deposits or file an application with the Residential Tenancy Branch by August 15, 2021. He did neither. It was not until October 11, 2021 that the tenant received the return of her security and pet damage deposits, well past the legally required 15 days as required by subsection 38(1) of the Act.

Regarding the tenant's claim for double the return, section 38(6) of the Act states that

> 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.

Here, the landlord did not comply with subsection 38(1) of the Act.

After taking into consideration all the undisputed oral and documentary evidence before me, it is my finding that the tenant has proven, on a balance of probabilities, that she is entitled to the doubled amount of the security and pet damage deposits, in the amount of $987.50.

Finally, section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another. When an applicant is successful in their application the respondent is ordered to pay an amount equivalent to the applicant's filing fee. Therefore, the landlord is ordered pay the tenant $100.00.

In total, the tenant is awarded $1,087.50, which the landlord is ordered to pay to the tenant within 15 days of receiving this decision, pursuant to section 67 of the Act.

A monetary order is issued in conjunction with this decision, to the tenant. Should the landlord refuse to, or does not, pay the tenant the above-noted amount then the tenant must serve a copy of the monetary order on the landlord. The tenant may then enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

The tenant's application is hereby **GRANTED**.

The landlord is hereby ordered, pursuant to sections 38(6) and 67 of the Act, to pay to the tenant $1,087.50.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: May 26, 2022

Residential Tenancy Branch