Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR GP INC. GENERAL PARTNER FOR NPR
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSDB-DR, FFT

Introduction

This hearing was convened further to the Tenant's Application for Dispute Resolution by Direct Request, made on October 16, 2021. In a decision issued on December 6, 2021, an adjudicator adjourned that matter to a participatory hearing. The Tenant applies for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord return the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord was not represented at the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on December 7, 2021. Canada Post registered mail receipts including the date and time of purchase and the tracking number were submitted in support. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days after they are mailed. I find these documents are deemed to have been received by the Landlord on December 12, 2021.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to the return of a security deposit and/or a pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant testified that she moved into the rental unit on October 30, 2020, two days before the tenancy start date indicated in the tenancy agreement, a copy of which was submitted into evidence. The Tenant testified that the tenancy ended on September 30, 2021 and that she agreed to pay rent to that date. However, the Tenant moved out of the rental unit on September 2, 2021. The Tenant testified that she paid a security deposit of $692.50 and a pet damage deposit of $692.50. Receipts confirming payment of the deposits were submitted into evidence.

The Tenant testified that she provided the Landlord with a forwarding address in writing during a move-out condition inspection on September 2, 2021. A copy of the signed Condition Inspection Report showing the Tenant's forwarding address was submitted into evidence.

The Tenant testified that the Landlord refunded the security deposit, which was received on October 20, 2021, but did not return the pet damage deposit.

As noted above, the Landlord was not represented at the hearing.

Analysis

Based on the unchallenged and affirmed documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the landlord must pay the tenant double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Tenant provided the Landlord with a forwarding address in writing during the move-out condition inspection on September 2, 2021, but that the tenancy did not end until September 30, 2021. As a result, pursuant to section 38(1) of the Act, I find the Landlord had until October 15, 2021 – 15 days after the date the tenancy ended – to return the security deposit and the pet damage deposit to the Tenant. I find that the security deposit was repaid to the Tenant on October 20, 2021, but that the pet damage deposit has not been repaid to the Tenant.

As the Landlord did not return both deposits to the Tenant by October 15, 2022 and there is no evidence before me to confirm the Landlord made a claim against them by filing an application for dispute resolution, I find the Tenant is entitled to recover double the amount of the deposits.

Policy Guideline #17 provides examples to help calculate the amount due to a tenant. In this case, I find that Example A is most like the current circumstances:

> Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
>
> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

Applying Policy Guideline #17 to my findings, above, I find the Tenant is entitled to recover $2,077.50, which has been calculated as follows:

$$(\$692.50 + \$692.50) \times 2 = \$2,770.00$$

$$\$2,770.00 - \$692.50 = \$2,077.50$$

Having been successful, I also find the Tenant is entitled to recover the $100.00 filing fee paid to make the application.

Conclusion

The Tenant is granted a monetary order in the amount of $2,177.50, which is comprise of $2,077.50 for double the deposits and $100.00 in recover of the filing fee. The order must be served on the Landlord. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision 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: June 30, 2022

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Residential Tenancy Branch