Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on December 02, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in November of 2022 was sent to the Landlord, via registered mail. The Landlord initially acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings. During the hearing the Landlord denied receiving one of the documents submitted by the Tenant. This issue is discussed in my analysis.

In April of 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was Mailed to the Tenant in April of 2022. The Agent for the Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- The tenancy began on July 01, 2021;
- A security deposit of $325.00 was paid;
- A time to jointly inspect the rental unit was not scheduled at the start of the tenancy;
- The unit was not inspected at the start of the tenancy;
- The Tenant did not authorize the Landlord to retain any portion of the security deposit;
- In mid-November of 2022 the Landlord returned $102.00 of the security deposit; and
- On April 04, 2022 the Landlord returned another $77.65 of the security deposit.

The Landlord stated that the tenancy ended on October 31, 2021. The Agent for the Tenant stated that it ended on November 01, 2021.

The Landlord stated that a condition inspection was scheduled for November 03, 2022, although no specific time was scheduled. The Agent for the Tenant stated that a condition inspection was not scheduled at the end of the tenancy.

When asked if the Landlord filed an Application for Dispute Resolution seeking to retain any portion of the security deposit, the Landlord stated that she applied on October 04, 2022 or November 04, 2022. The Landlord was unable to provide a file number for the Application for Dispute Resolution she allegedly filed, and I am not convinced the Landlord understood the question being asked.

The Agent for the Tenant stated that the Landlord did not serve the Tenant with an Application for Dispute Resolution in which the Landlord applied to retain the security deposit.

The Agent for the Tenant stated that a forwarding address was provided for the Tenant, via text message, on November 09, 2021. The Landlord stated that she did not receive a forwarding address for the Tenant, via text message, prior to the hearing and she did

not receive a copy of the text message in the evidence package served to her by the Tenant.

The Tenant submitted a copy of a one-page text message sent on November 09, 2021 to the Residential Tenancy Branch. The Landlord stated that this message was not included in the evidence package served to her.

The Landlord submits that she retained a portion of the Tenant's security deposit to replace a broken toilet seat.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of $325.00; that the Landlord has returned $179.65 of that deposit; and that the Landlord still retains $145.35 of that deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As the Tenant has filed this Application for Dispute Resolution, the Tenant bears the burden of proof at these proceedings, which includes bearing the burden of proving that a forwarding address was provided to the Landlord.

While I accept the Agent for the Tenant's testimony that a forwarding address was sent to the Landlord, by text message, on November 09, 2021, I find that the Tenant has submitted insufficient evidence to establish that the Landlord received this text message. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a response to that text message, that refutes the Landlord's testimony that she did not receive the text message in November of 2021.

Section 88 of the *Act* requires that a forwarding address be provided to a landlord in one of the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
(i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
(j) by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that purposes of section 88(j) of the *Act*, documents be given to a person by emailing a copy to an email address provided as an address for service by the person.

Section 88 of the *Act* does not permit service of documents by text message.

As the Landlord does not acknowledge receiving the Tenant's forwarding address by text message and text messaging is not a method of serving a forwarding address that is permitted by the *Act*, I cannot conclude that the Landlord received a forwarding address for the Tenant, in writing.

I find there is insufficient evidence to determine if the Landlord is being truthful when she testified that a copy of the text message was not served to her in the Tenant's evidence package or if the Agent for the Tenant is being truthful when she testified that that a copy of the text message was served in the evidence package. I am, therefore, unable to consider that particular document as evidence for these proceedings. Typically, in such circumstances, I would adjourn the hearing to provide the Tenant with an opportunity to re-serve this evidence to the Landlord.

In these particular circumstances, however, I find that an adjournment would not be helpful. Even if were able to view a text message that was sent to the Landlord, in which a forwarding address was provided to the Landlord, it would not establish that the Landlord received that forwarding address prior to the Application for Dispute Resolution being filed and it would not alter the fact the *Act* does not permit service of a forwarding address by text message.

As the Tenant has failed to establish that the Landlord received a forwarding address, in writing, at anytime prior to the Tenant filing this Application for Dispute Resolution, I find that the Landlord was not obligated to comply with section 38(1) of the *Act* at the time this Application for Dispute Resolution was filed.

Although it is clear that the Landlord received a forwarding address for the Tenant when she was served with the Tenant's Application for Dispute Resolution, I find that this document represented notice that there would be a hearing into this matter and did not constitute service of a forwarding address for the purposes of section 38(1) of the *Act*. In these circumstances I find that it was reasonable for the Landlord to wait until the dispute resolution proceeding was completed before complying with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the was not obligated to comply with section 38(1) of the *Act* prior to the hearing on June 27, 2022, I find that the Landlord is not subject to the penalty imposed by section 38(6) of the *Act*.

For the purposes of section 38(1) of the *Act*, I find that the Landlord has been served with a forwarding address on the day she receives this decision.

Section 23(3) of the *Act* requires a landlord to offer a tenant at least two opportunities to complete an inspection of the rental unit at the start of the tenancy. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 23(3) of the *Act*, as she did not schedule an inspection of the rental unit at the start of the tenancy.

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against a security deposit for damage is extinguished if the landlord fails to comply with section 23(3) of the *Act*. As the Landlord has failed to comply with section 23(3) of the *Act*, I find that her right to claim against the security deposit for a damaged toilet seat is extinguished.

As the Landlord does not have a right to claim against the security deposit for damage to the unit, I find that she must return the $145.35 of the Tenant's security that is still being held by the Landlord.

Although the Landlord does not have the right to claim against the security deposit for damage to the unit, the Landlord retains the right to file her own Application for Dispute Resolution seeking compensation for damage to the unit.

Although the Landlord submits that she did file an Application for Dispute Resolution, I can find no evidence that supports that submission.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $245.35, which includes $145.35 from the security deposit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 29, 2022

Residential Tenancy Branch