Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Return of $700.00 security deposit [the 'Deposit'].
2. Reimbursement for the $100.00 filing fee for this application.

The tenants appeared at the hearing on 19 June 2023. The landlords did not.

Preliminary Matter - Non-appearance at the Hearing

The landlords did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1330 hours and ended about 39 minutes later. I confirmed:

1. that on 4 May the tenants sent a copy of the Notice of Hearing *via* registered mail to the address of the landlords as recorded in the tenancy agreement;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and
3. by reviewing the teleconference system, that the tenants and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords failed to attend this hearing, but I conducted it in their absence. The tenants satisfied me that they had correctly notified the landlords of this hearing and how to participate.

Issues to be Decided

Must the landlords return the Deposit to the tenants?

Should the landlords reimburse the tenants for the cost of filing their application?

Background and Evidence

The tenants paid the landlords this Deposit before they moved into the rental unit on 1 October 2022. They supported this statement with a record of this deposit.

They also told me that the landlords did not conduct a move-in inspection with them, nor did they offer one: the landlords merely signed the tenancy agreement with the tenants, and then provided them the keys to the unit.

Then, before the end of the tenancy, the tenants suggested a move-out inspection for sometime during the last week of the tenancy. The landlords replied that they were busy, but they would ‘swing by the unit and take a look’. But the tenants never heard from the landlords again before moving out. After moving out, the landlords told them that they would inspect the unit when they had a chance.

Three days after moving out, the tenants gave the landlords an e-mail address as a forwarding address. The landlords replied that an e-mail address was not good enough.

In reviewing the Notice of Hearing, I noted that the tenants provided an address for service in that notice, which they served on the landlords *via* registered mail on 4 May, six weeks before this hearing.

As of the date of this hearing, the landlords had not returned the Deposit.

Analysis

In analysing this dispute, I consider Residential Tenancy Policy Guideline 17: 'Security Deposit and Set off'. This guideline reads, in part:

> The arbitrator will order the return of a security deposit… on… a tenant's application for the return of the deposit… unless the tenant's right to the return of the deposit has been extinguished under the Act.

And the guideline cites sections 24(1), 36(1), and 38(2) as the portions of the *Residential Tenancy Act* [the 'Act'] that might extinguish a tenant's right to the return of a deposit. Those sections extinguish this right if a tenant did not participate in a move-in inspection or a move-out inspection.

So, has the tenants' right to the return of the Deposit been extinguished under these sections? No: the uncontroverted statements of the tenants show that the landlords never conducted either a move-in or move-out inspection.

The guideline goes on to read:

> Unless the tenant has specifically waived the doubling of the deposit… the arbitrator will order the return of double the deposit… if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

I have no record of the landlords filing any claim against the Deposit. The Act is silent as to what constitutes a 'forwarding address'. As section 38 (8) (c) of the Act permits security deposits to be returned *via* electronic transfer of funds, there does not appear to be any reason why an e-mail address would be insufficient as a forwarding address for the purpose of the return of a security deposit.

As a result, I find that the landlords owe the tenants:

1. double the Deposit; plus
2. $7.70 in interest on the Deposit, from 1 October 2022 to today's date.

Conclusion

I order that the landlords pay to the tenants $1,407.70 *per* section 38 (6) of the Act.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 25 July 2023

Residential Tenancy Branch