



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding REGAL ASSET MANAGEMENT LTD., BIG BIRD SERVICE LTD. and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's application was made on August 28, 2023. The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent and/or utilities;
- a monetary order for damage caused during the tenancy;
- a monetary order for compensation for monetary loss or other money owed;
- an order allowing the Landlord to retain all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant's application was made on September 7, 2023. The Tenants applied for the following relief, pursuant to the Act:

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was not represented at the hearing on March 5, 2024. The Tenants were represented at the hearing by MB, who provided a solemn affirmation. At the beginning of the hearing, MB stated that a representative of the Landlord asked MB only minutes before the hearing if he would request an adjournment due to illness. MB indicated that he would prefer to have the issue resolved.

As a brief background, the hearing of these matters was first convened on January 30, 2024. On that date, the hearing was adjourned at the request of WCL, who advised that the Landlord's representative with knowledge of the claim was unable to attend the hearing for personal reasons. Although MB indicated at that time that he would prefer to proceed, he did not object strongly to the adjournment.

The Landlord's application was made on August 28, 2023, more than six months ago. I find there has been sufficient time for the Landlord to appoint an agent with knowledge of the claim to attend the hearing. I note again there has already been one adjournment granted at the Landlord's request. Considering the history of the proceeding, the late request to MB for an adjournment, and the Landlord's failure to have an agent attend the hearing on March 5, 2024, I decline to grant a further adjournment of the Landlord's application. As a result, I find that the Landlord's application is dismissed without leave to reapply. It has not been considered further in this decision.

With respect to the Tenants' application, the Notice of Dispute Resolution Proceeding document was sent to the parties directly by the Residential Tenancy Branch. However, MB testified that the evidence related to the Tenants' application was served on the Landlord by registered mail on December 8, 2023, and by email on February 28, 2024. In the absence of evidence to the contrary, and pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

MB was provided with an opportunity to present evidence related to the Tenants' application both 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. However, only the evidence relevant to the issues and findings in this matter is described in this decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

MB confirmed that the corporate Landlord named in the applications is a property manager and represents the owner of the rental property. The corporate Tenant named in the applications is in the business of providing housing for international students. The tenancy agreement submitted into evidence describes SB as the "personal guarantor" of the corporate Tenant.

MB acknowledged that the tenancy began on June 15, 2023, and was expected to continue to June 30, 2024. However, the Tenants vacated the rental unit on or about June 30, 2023. During the tenancy, rent of \$8,000.00 per month was due. The Tenants paid a security deposit of \$4,000.00, which the Landlord holds.

The Tenants apply for the return of the security deposit. MB testified that the Tenants provided the Landlord with a forwarding address in writing by email on July 31, 2023. A copy of a Tenant's Notice of Forwarding Address document, dated July 31, 2023, was submitted in support.

MB also testified that a forwarding address was served on the Landlord by email on September 7, 2023. The Tenants also submitted a Proof of Service document and a copy of the email to the Landlord, dated September 7, 2023.

As noted above, the Landlord did not appoint a representative to attend the hearing to dispute the Tenants' evidence.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 38(1) of the Act confirms that a landlord must 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 tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenants provided the Landlord with a forwarding address by email on July 31, 2023. Pursuant to sections 88 and 90 of the Act, I find the forwarding address is deemed to have been received on August 3, 2023, three days after the email was sent. However, the Landlord's application was not made until August 28, 2023, 25 days after the forwarding address is deemed to have been received, and MB testified the security deposit has not been returned. As a result, pursuant to section 38(6) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit held, or \$8,000.00 (\$4,000.00 x 2).

As the Tenants have been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

Considering the above, and pursuant to sections 38, 67, and 72 of the Act, I grant the Tenants a monetary order for \$8,100.00, which is comprised of \$8,000.00 for the return of double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant is granted a monetary order for \$8,100.00. 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: March 5, 2024

Residential Tenancy Branch