Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kelowna Bay Resort
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of his security deposit, doubled, and for recovery of the filing fee.

The tenant served each landlord/respondent with his application for dispute resolution package, and Notice of Hearing letter via registered mail on June 14, 2013.

Section 90 of the Act states that documents served via registered mail are deemed delivered five days later. Thus the landlords were deemed to have received the tenant's application for dispute resolution and Notice of Hearing letter by June 19, 2013.

The tenant and landlord MM appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed receipt of the other's documentary evidence. The landlord raised no issue with regard to service of the tenant's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, which includes his security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2012, ended on or about April 25, 2013, when the tenant vacated the rental unit, monthly rent was $2000, and the tenant paid a security deposit of $1000 at the beginning of the tenancy.

There is also undisputed evidence that the landlord returned a portion of the tenant's security deposit in the amount of $625 after the tenancy ended, via email transfer; however the tenant did not accept this payment and it was returned to the landlord. The tenant submitted that he did not accept this payment as he disagreed with the deduction.

In response to my question, the tenant stated that he had provided his written forwarding address to the landlord located on the first page of the written tenancy agreement signed by the parties on August 4, 2013. This address is a postal box number. I note that directly underneath this address is the tenant's telephone number and email address.

The tenant submitted that he has made numerous requests to the landlord, via email contact, for a return of his security deposit in full. Further, the email communication with the landlord shows that the tenant requested information from the landlord as to why the landlord was retaining a portion of his security deposit.

The tenant submitted that he requested a final inspection with the landlord, but that he was not contacted by any agent of the landlord; instead a company he was not familiar with attempted to contact him.

The tenant submitted that the rental unit was clean when he vacated the rental unit.

In response, the landlord denied receiving the tenant's written forwarding address and further submitted that the tenant failed to attend a move out inspection with the cleaning company hired by the landlord to clean the rental units in their property. The landlord confirmed that the cleaning company was not an employee of the landlord.

The landlord also confirmed that it was his belief that the rental unit was required to be left in the same condition as it was at the start of the tenancy.

Both parties agreed that email communication was the primary method of contact between the parties during this tenancy.

The tenant's relevant documentary evidence included the tenancy agreement, registered mail receipts, and copies of email communication between the parties.

The landlord's relevant documentary evidence included a written explanation of evidence, a note from the cleaning company, dated April 5, 2013, a blank check-out report, an invoice from the cleaning company, dated May 22, 2013, a note from the owner of the cleaning company, a worksheet from the cleaning company, and copies of email communication between the parties.

Neither party submitted a copy of a move-in or move-out condition inspection report, if one existed. I note the tenant stated that he remembered signing a condition inspection report at the move-in, but was not given a copy of the same.

Analysis

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

I do not find that the tenant's right to the security deposit have been extinguished by operation of the Act as I find that the tenant did not fail to participate in a move-out inspection for the following reason. Section 35 of the Act requires the landlord and tenant to conduct an inspection of the rental unit and I find that an independent cleaning company, who may likely have a vested interest in finding some necessary cleaning, does not meet the definition of a landlord under section 1 of the Act. The tenant was unfamiliar with the cleaning company and the cleaning company was not a designated agent. I cannot find that the landlord actually attempted to inspect the premises with the tenant at the end of the tenancy.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In the case before me the landlord denied receiving the tenant's written forwarding address. I find this statement lacks credibility. The landlord offered this statement towards the conclusion of the hearing not in response to my question, but after my direct questions to the tenant earlier in the hearing.

Additionally, the email communication between the parties confirms that the landlord's intention all along was to retain a portion of the tenant's security deposit depending on what the cleaning company reported.

I find it clear that the landlord had the tenant's written forwarding address due to the prominent placement of the address on the first page of the tenancy agreement, along with the email address of the tenant.

The landlord did return a portion of the tenant's security deposit through this email address and therefore had a method of returning the full amount, if they so chose.

At the very least the landlords received the tenant's written forwarding address as it was contained in his application for dispute resolution claiming double his security deposit when they received the documents via registered mail by June 19, 2013. At that point, the landlords could very well have made their own application for dispute resolution to claim against the deposit and chose not to. I note that the address used by the tenant was the same as listed in the tenancy agreement.

As the tenancy ended on April 25, 2013, and the landlords had the tenant's written forwarding address on August 4, 2012, when the tenancy agreement was signed, or through email throughout the tenancy for an email transfer of the balance of the security deposit, and at the very latest by June 19, 2013, when the landlords were deemed to have received the tenant's application for dispute resolution containing his address, the landlords were required to return the full amount of the tenant's security deposit no later than July 4, 2013, 15 days after the very latest time the landlords received the tenant's written forwarding address, pursuant to section 38(1) of the Act.

Instead of returning the full amount of the tenant's security deposit, the landlords made an unauthorized deduction and returned only a portion, contrary to the Act.

Due to the above, I find the tenant has proven an entitlement to a monetary award of $2050, comprised of his security deposit of $1000, doubled to $2000, plus recovery of the filing fee, which I have granted due to his successful application.

Conclusion

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of $2050, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay after being served the order pursuant to section 88 of the Act, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement may be recovered from the landlords.

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* and is being mailed to both the applicant and the respondents.

Dated: September 27, 2013

Residential Tenancy Branch