Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARINE VIEW MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought recovery of the security deposit paid.

Only the Tenant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified he served the Landlord with the Notice of Hearing and his Application for Dispute Resolution by registered mail sent on June 6, 2016. He stated that he did so immediately after attending the Service B.C. office in the community in which he currently resides as that was when he received a filed copy of his application. He stated that he retained a physical copy of the tracking number as well as taking a photo of the package, but unfortunately both were lost when his wallet and phone were damaged by water. He stated that he was hopeful that he would be able to locate another copy of the photo, but as of the date of the hearing was unable to do so.

I accept the Tenant's testimony that he served the Landlord by registered mail.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

> Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of June 11, 2016.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant testified that the individuals named on his Application for Dispute Resolution, identified as D. and J., were the agent for the Landlord and the Building Manager respectively. The Tenant stated that D. and J. refused to provide their last names to him while he was a tenant. As the Tenant was not able to provide last names for D. and J. they were not properly identified on the Application for Dispute Resolution.

Introduced in evidence was a copy of the Move in and Move out Condition Inspection Report wherein the legal name of the Landlord is noted as M.V.M. The Tenant also named M.V.M. on his application with the names D. and J.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act,* I amend the Tenant's Application for Dispute Resolution to remove D. and J.'s names.

Issue to be Decided

1. Is the Tenant entitled to recovery of double his security deposit?

Background and Evidence

The Tenant testified that the tenancy began on September 15, 2015. Monthly rent was payable in the amount of $1,200.00 for a 2 bedroom apartment in large apartment building. The Tenant paid a security deposit in the amount of $600.00.

The move out condition inspection report provided in evidence confirmed the Tenant paid a security deposit in the amount of $600.00. This document also confirmed the Tenant provided his forwarding address to the Landlord at the time of moving out on April 29, 2016.

The testimony of the Tenant was that the Landlord did not return the $600.00 security deposit and did not make an application to retain the deposit within 15 days of the end of the tenancy.

The Tenant testified that he attempted to communicate with D. regarding the return of his security deposit. He stated that he also tried to communicate with J. but both D. and J. refused to answer his calls or texts (which had been, prior to that date the primary means of communication). The Tenant further testified that when he informed D. that he could not retain the deposit, and was required to make an application for dispute resolution, D. told the Tenant that he would get "nothing".

The Tenant testified that the Landlord wrote $600.00 in the move out condition inspection report as proof that he paid this sum, not proof that he agreed that the Landlord could retain the full deposit. The Landlord further wrote "Wed SepT 9, 2015" which was the date the security deposit was *paid,* not the date the Tenant signed the move out inspection report.

Text communication sent by the Tenant to the Landlord, which was submitted in evidence, confirms the Tenant did not agree to the Landlord retaining his security deposit.

Analysis

The Tenant seeks return of double his security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

> **Return of security deposit and pet damage deposit**
>
> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Tenant did not agree in writing, that the Landlord could retain any portion of the security deposit. I accept the Tenant's testimony that the Landlord wrote the figure "$600.00" on the move out inspection as well as the date this sum was paid to confirm the amount paid at the start of the tenancy, not to confirm the Tenant's agreement the Landlord could retain these funds. In making this finding, I am persuaded by the text communication sent by the Tenant to the Landlord wherein he clearly requests return of these funds. Further, the deficiencies noted on the move out condition inspection report is minimal and likely more akin to reasonable wear and tear rather than damage, and in any case, would not be consistent with a $600.00 deduction.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit.

In failing to apply for dispute resolution, or returning the deposit within 15 days of receipt of the Tenant's forwarding address, the Landlord has breached section 38 of the Act.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here I find that the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **$1,200.00**, comprised of double the security deposit ($600.00 x 2).

The Tenant is given a formal Monetary Order in the amount of **$1,200.00**. Should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Smalls Claims Division) and enforced as an Order of that court.

Dated: November 15, 2016

Residential Tenancy Branch