Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution made on June 21, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies under the Act:

1. a monetary order for the return of their security deposit pursuant to section 38(1)(c) of the Act; and,

2. a monetary order for recovery of the filing fee pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on November 19, 2018, and the landlord and a tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to a monetary order for the return of their security deposit?

2. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy commenced on May 1, 2014 and ended when they moved out on April 28, 2018. Monthly rent was $1,000.00, and the tenants paid a security deposit of $500.00. There is not pet damage deposit. Neither party submitted a copy of a tenancy agreement, though neither party disputed the above-noted information, other than the move out date. The landlord disputed that the tenant moved out on April 28, 2018, and instead stated that it was May 30, 2018.

The tenant further testified that she gave a copy of their forwarding address to the landlord when they gave the landlord back the keys, on April 28, 2018. The landlord did not return the security deposit, but later sent the tenant a money order in the amount of $52.54, after deductions were made for various items. The tenants submitted a package of documentary which included a one-page written submission regarding their application, a handwritten deduction document for various claims made against the security deposit by the landlord, and a photocopy of the $52.54 Canada Post money order, dated June 18, 2018.

The landlord testified that the tenant did not vacate the rental unit on April 28, but instead handed over the keys and vacated on or about May 30, 2018. She acknowledged having received the tenants' forwarding address on that date. When the landlord later returned to the rental unit she found it to be quite dirty, filthy, with screen sticking out, an unremoved screw in the bedroom wall, and a hinge in the main bathroom that had been chiseled. The landlord submitted a package of documentary evidence containing several photographs and receipts.

Both parties testified that no condition inspection report was completed either at the start of, or at the end of, the tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenants are making a claim for compensation for the return of their security deposit.

Section 38(1) of the Act, titled “Return of security deposit and pet damage deposit,” reads as follows:

> 38 (1) Except as provided in subsection (3) of (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends,
> >
> > (b) the date the landlord receives the tenant’s forwarding address in writing,
>
> 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.

Subsection 38(8) refers to the different method that a landlord may repay a deposit.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, the parties disagree on when the tenants vacated the rental unit and provided a copy of their forwarding address to the landlord. However, based on the tenants’ written submission, in which the tenants stated that they met the landlord on May 29, 2018. As such, in the absence of any documentary evidence from the landlord to establish that the parties met on May 30, 2018 (though, I do note that the landlord was not entirely certain as to the date, but did believe that it was around the end of May)

I therefore find for the purposes of this dispute that the tenant provided their forwarding address to the landlord on May 29, 2018. And, the landlord confirmed having received the tenants’ forwarding address.

Further, there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit. There is also no evidence before me to find that there was an agreement in writing between the parties permitting the landlord to retain any amount from the security deposit.

While the rental unit may very well have been filthy, the landlord did not have the legal right to withhold any portion of the security deposit to cover costs or expenses related to the condition of the rental unit. The landlord ought to have applied for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

I should note, however, that pursuant to sections 36 and 38(5), a landlord extinguishes the right to claim against a tenant's security deposit where the landlord fails to complete an inspection condition report both at the start of, and at the end of, the tenancy. This does not mean that a landlord cannot seek compensation against a former tenant for damages, but rather, they cannot claim against the security deposit.

As such, after taking into careful consideration the oral and documentary evidence of the parties, I find that the landlord did not comply with section 38(1) of the Act, and I therefore grant the tenants a monetary award for the return of their security deposit.

Further, section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord failed to return the security deposit in compliance with section 38(1) of the Act, I therefore find that the landlord must pay the tenants double the amount of the security deposit for a total of $1,000.00, minus the $52.54 that the landlord refunded to the tenants after the 15 days had elapsed since receiving the tenants' forwarding address.

As the tenants were successful in their application, I grant them a monetary award in the amount of $100.00 for the recovery of the filing fee.

Given the above, and pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of $1,047.46 (calculated as follows: $500.00 security deposit x 2 = $1,000 - $52.54 + $100.00 = $1,047.46.)

Conclusion

I hereby grant the tenants a monetary order in the amount of $1,047.46, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding, except as otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 19, 2018

Residential Tenancy Branch