Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

In this dispute, the tenant seeks compensation for one month's rent and for the return of their security deposit, pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the "Act"). And, the tenant seeks to recover the filing fee under section 72 of the Act.

The tenant filed an application for dispute resolution on April 15, 2020 and a dispute resolution hearing was held, by teleconference, on August 21, 2020. The tenant attended the hearing and was given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The landlord did not attend.

Regarding service of the Notice of Dispute Resolution Proceeding package, the tenant testified that they served the package on the landlord via e-mail to the landlord's agent on April 17, 2020. They testified that the landlord's agent responded to that e-mail, confirming receipt of the package. The tenant has not heard anything further from the landlord or their agent, however.

Based on the tenant's undisputed evidence regarding service, I find that the landlord was served the Notice of Dispute Resolution Proceeding in compliance with sections 59(3) and 89(1)(b) of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to compensation for one month's rent?
2. Is the tenant entitled to compensation for the return of their security deposit?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

By way of background, this tenancy lasted one whole day.

The tenant and landlord entered into a written Residential Tenancy Agreement (a copy of which was submitted into evidence) for a fixed-term tenancy that was to start on April 1, 2020 and end on September 30, 2020. The tenancy would then be a periodic, or month-to-month tenancy, after September 30.

Monthly rent was $1,350.00 and the tenant paid a security deposit of $675.00.

The tenant provided a written submission on the facts of this case, from which I shall reproduce, and for which the tenant affirmed its accuracy and depiction of the events that transpired. As this decision is published online and publicly available (except for the cover page), I have redacted names of individuals for privacy reasons. The written submissions reads as follows (relevant excerpts):

> On March 27, 2020 I inspected the [rental unit], as the agent, [name redacted], instructed me to do. He also informed me that I was free to visit any time in preparation for my move-in on April 1, 2020. Upon my arrival, I noticed that the front door lock was tricky to open. When leaving, I was unable to lock it entirely. It appeared as though the mechanism was broken, because I could turn the key inside the lock but the door remained unlocked. I informed the agent of this, as well as some other items in the suite in need of attention, via text (Photographs 1-4). When he said he wished to no longer be involved with that suite, I also directed the same text to [name redacted], the landlord (Photographs 5-6).
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> On March 30, 2020 I visited the suite again to see if it the items had been addressed, since I was meant to move in just two days. Once more, I noted that the front door lock was having the same issues, and thus had not been fixed. I texted the landlord again and informed her of the problem, as well as some other items that also still required attention (such as a broken cabinet) (Photographs 7-9). [. . .]
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> The landlord responded to my text, saying she would go to the suite to investigate and fix the broken items (Photograph 10). When she arrived, she called me (Photographs 11-12). I assumed she was calling because she had questions about the items I said required attention. When I picked up she

immediately began yelling at me. She told me that I had broken her door and needed to fix it. She used many curse words and called me “too fussy”.

I calmly told her that I did not break the door, as it had been broken since the time I first inspected the suite. I also told her that I thought it was reasonable to have broken items fixed before I moved in, as she had previously agreed to do.

She screamed at me again, and told me that our arrangement was finished. She said she did not want me to move into her suite because she claimed that I was unreasonable and fussy. She told me that she would give me back my deposit if I agreed not to move.

Since I was counting on moving into the suite, I felt quite panicked. I asked several times if she was sure, because I really wanted to live there. I also told her that she would be breaking the lease and thus liable to reimburse me for rent as well as the deposit.

She screamed, “F**k you, sue me.”

I hung up the phone as she continued to yell curse words, feeling near tears. The landlord called me another five times immediately after this conversation, but, as her tone was so threatening during our call, I did not feel comfortable answering (Photograph 13).

Then I texted my brother about what happened (Photographs 14-17), relaying the conversation between the landlord and me to him.

The tenant gave their written forwarding address to the landlord’s agent by way of text message on April 1, 2020 at 7:47 PM. A copy of this text message was submitted into evidence.

Needless to say, the tenant did not move into the rental unit.

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.

Claim for Compensation for One Month's Rent

A tenancy can come to an end for a variety of reasons. A landlord can give notice, or a tenant can give notice. In this case, however, the landlord simply told the tenant that the tenancy "was finished." Further, the landlord "said she did not want me to move into her suite because she claimed that I was unreasonable and fussy." Being unreasonable and fussy is not a legally recognized ground for ending a tenancy.

In this case, there is no section of the Act by which the landlord had the legal right to end the tenancy. Moreover, by stating that the tenant was not permitted to move into the rental unit breaches both the tenancy agreement and section 30 of the Act, which states that a landlord must not unreasonably restrict a tenant's access to the rental unit.

Section 7(1) of the Act states that "If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results."

In this case, the tenant seeks compensation for one month's worth of rent for a rental unit that had been legally promised to the tenant, but which the landlord, without legal right, denied the tenant. One month's compensation in rent in the amount of $1,350.00 is, I must conclude, reasonable compensation for the landlord's breach of both the tenancy agreement and the Act.

Claim for Compensation for Return of Security Deposit

The tenancy ended on the day it started; that is, April 1, 2020. The landlord stated that they would return the security deposit if the tenant did not move into the rental unit. The tenant did not move into the rental unit because the landlord cancelled the tenancy. To date, the landlord has not, despite their assurance, returned the security deposit.

The tenant gave the landlord their forwarding address, in writing (by text message), on April 1, 2020, at 7:47 PM.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and

(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.

The tenancy ended and the landlord's agent received the tenant's forwarding address in writing on April 1, 2020. Therefore, the landlord had until April 15, 2020 in which to file an application for dispute resolution, or, to return the security deposit. They did neither.

And so, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for the return of the $625.00 security deposit.

Section 38(6) of the Act states that

(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.

Here, having found that the landlord did not comply with section 38(1) of the Act, I conclude that the landlord must pay the tenant double the amount of the security deposit, in the amount of $1,350.00.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful in their application, I therefore grant the claim for reimbursement of the $100.00 filing fee.

A total monetary award of $2,800.00 is granted to the tenant.

Conclusion

I hereby grant the tenant a monetary order in the amount of $2,800.00, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 21, 2020

Residential Tenancy Branch