Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

In this dispute, the tenants seek the return of their security deposit pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the "Act"). In addition, they seek recovery of the application filing fee pursuant to section 72 of the Act.

The tenants filed an application for dispute resolution on July 24, 2020 and a dispute resolution hearing was held at 1:30 PM on October 1, 2020. The application had been made by way of direct request proceeding, during which the adjudicator adjourned the application to a hearing. The tenants attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. Neither landlord attended the hearing, which ended at 1:42 PM.

The tenants testified that they served the Notice of Dispute Resolution Proceeding (which, I note, the Residential Tenancy Branch, "the Branch," sent by email to the tenants on August 5, 2020) by way of Canada Post Xpresspost on August 8, 2020. Further, I note that the Residential Tenancy Branch dispute resolution file for this application indicates that on August 11, 2020, the landlord ("T.L.") attended to the Burnaby Branch and the following note by Information Officer A.W. is recorded:

> LL TL CAME IN PERSON TO RTB BBY AUG 11 & PRESENTED HER COPY OF NOH BUT NO HRG DATE LISTED ON IT. IT APPEARS HER COPY IS CUT OFF ON BOTTOM AS IT ONLY SHOWS UP TO RESP INFO. THE EMAIL SENT TO TT AUG 5 SHOWS COMPLETE NOH AS IN DMS. LL ID CONFIRMED (BCDL). GAVE LL COURTESY COPY OF NOH & INT DEC. SHE SAID HASN'T REC'D INT DEC YET. ADVISED HER TO CONTACT INFO LINE TO RECEIVE MORE INFO ON DISP RES.

Based on the above-noted evidence of the tenants and the information contained in the file of the Branch, I find that the landlords were served with the Notice of Dispute Resolution Proceeding in compliance with the Act and the *Rules of Procedure,* and further, that the landlords were fully aware of, and notified of, the hearing date and time.

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. Are the tenants entitled to the return of their security deposit?

2. Are the tenants entitled to recovery of the filing fee of $100.00?

Background and Evidence

In this dispute, the tenancy began on March 1, 2020 and ended on June 30, 2020. Monthly rent was $1,400.00 and the tenants paid a security deposit of $700.00, which the landlords currently retain in trust. A copy of the written tenancy agreement was submitted into evidence.

On July 1, 2020, the tenants gave a copy of their request for the return of the security deposit, along with their forwarding address in writing, to the landlords. This one-page document, a copy of which was tendered into evidence, was served by being left in a mail slot of the landlord (which, it should be noted, is a method of service permitted under section 88(f) of the Act).

Further, the tenants testified and confirmed that at no time did they provide written authorization for the landlords to retain the security deposit. The landlords have not, to date, returned any of the security deposit. Indeed, the tenant (K.D.) testified that one of the landlords texted him about three weeks, and in which text she basically told him he “was not going to get any of [his] money back.” Apparently, she “has witnesses” to support her decision for not returning the security deposit.

Finally, it should be noted that the tenants testified that at no time did the landlords complete a Condition Inspection Report either at the start or 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.

Claim for Security Deposit

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,
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> the landlord must do one of the following:
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> (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.

In this dispute, the landlords received the tenants' forwarding address in writing on July 1, 2020. Pursuant to section 90(c) of the Act, the landlords are deemed to have received this information on the third day after it was put through the mail slot. The landlords then had 15 days after having received the forwarding address – that is, until July 18, 2020 – to either repay the security deposit or make an application for dispute resolution. It appears that they did neither. As such, the landlords have not, I find, complied with section 38(1) of the Act. Finally, the tenants did not give written authorization for the landlords to retain any of the security deposit.

Section 38(6) of the Act states that

> (6) If a landlord does not comply with subsection (1), the landlord
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> (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, given that the landlords did not comply with subsection 38(1) of the Act, I order that the landlords must pay the tenants double the amount of the security deposit in the amount of $1,400.00. Further, the landlords are statute-barred from making any application for dispute resolution claiming against the security deposit.

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 tenants were successful, I award them an additional amount of $100.00 for the filing fee.

Conclusion

I hereby grant the tenants a monetary order in the amount of $1,500.00, which must be served on the landlords. Should the landlords fail to pay the tenants the amount owed, the tenants 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: October 5, 2020

Residential Tenancy Branch