Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT MNSD FFT

Introduction

The tenants seek the return, and doubling, of their security and pet damage deposits under sections 38(1), 38(6), and 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the application filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on July 7, 2020 and a hearing was held on October 29, 2020. The tenants and one of the landlords attended the hearing and were given an opportunity to be heard, present testimony, and make submissions.

Issues

1. Are the tenants entitled to the return and doubling of their deposits?
2. Are the tenants entitled to recovery of the application filing fee?

Background and Evidence

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. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy began on June 30, 2017 and ended on February 1, 2020. Monthly rent was $1,500 and the tenants paid a $750 security deposit and a $750 pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The tenants gave evidence that they provided, in writing, their forwarding address to the landlord on February 1, 2020. However, the tenants also added their forwarding address on the last page of a Condition Inspection Report which was, according to the tenants, only meant for them.

The landlord photographed this page and submitted it into evidence. What is notable about this, though, is that the tenants' forwarding address was incorrectly written down by the tenant. Instead of the correct house number of 25069, the tenant had written down 20569. The tenants argued that the landlords had their correct address, however.

On February 3, 2020 the landlords filed an application for dispute resolution claiming compensation for various issues and claiming against the security and pet damage deposits. It should, at this point, be noted that the landlords' application for dispute resolution included the tenants' correct forwarding address of 25069. The arbitration hearing for the landlords' dispute occurred on June 23, 2020.

The landlords did not attend the hearing and the arbitrator dismissed their application. The landlord testified that he received the arbitrator's decision (dated June 23, 2020) on June 26, 2020. He then mailed a $1,500 cheque (dated June 29, 2020), which was received by the tenants on July 20, 2020. As per the tenants' submissions, they seek the doubled amount of the security deposit under the Act.

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 and Pet Damage Deposits

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
>
> (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.

In this application, while the landlords may have made an application for dispute resolution claiming against the deposits, the landlords failed to pursue their application by not attending the hearing. As is clearly explained on the Notice of Dispute Resolution Proceeding, “Parties (or agents) must participate in the hearing at the date and time assigned.” Unless there are exceptional circumstances for not attending a hearing, all parties must attend. The landlords did not, I note, file an application for review consideration under section 79 of the Act, which may have considered any such exceptional circumstances (though none were mentioned to me by the landlord). Finally, the landlords’ application itself of February 3, 2020 demonstrates that the landlords, in fact, had the tenants’ correct forwarding address at that time.

Given the above, I find that the landlords did not “make an application for dispute resolution” as contemplated within the meaning of section 38(1)(d) of the Act. To permit a party to apply for dispute resolution claiming against a deposit, and then not to pursue that claim, creates an unjust situation of basically “freezing” a tenant’s security deposit until a decision is issued by an arbitrator. In this case, the tenants waited rougly five months before their deposits were returned.

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 concluded that the landlords did not comply with subsection 38(1) of the Act, I find that the landlords must pay the tenants double the amount of the security deposit, minus the $1,500 that was returned in July 2020, for a balance of $1,500.00

Claim for Recovery of Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally

entitled to recovery of the filing fee. As the tenants are successful in their application, I grant their claim for reimbursement of the $100.00 filing fee.

Summary of Award and Order

A total award of $1,600.00 is granted. Issued in conjunction with this Decision, to the tenants, is a monetary order for this amount.

Conclusion

I grant the tenants a monetary order in the amount of $1,600.00, which must be served on the landlords. Should the landlords fail to pay the tenants the amount owed within 30 days of receiving this Decision, the tenants may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: October 29, 2020

Residential Tenancy Branch