Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 06, 2020 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch were sent, via email, to the Landlord's residence, which is the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act).*

As the aforementioned documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Landlord.

Each Tenant affirmed that they would speak the truth, the whole truth, and nothing but the truth.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The male Tenant stated that:

- the tenancy began on November 01, 2019;
- a security deposit of $1,075.00 was paid;

- this tenancy ended on June 01, 2020**;**
- the Tenants provided a forwarding address, by email, on June 14, 2020;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord has not served them with an Application for Dispute Resolution claiming against the security deposit.

The Tenants submitted a copy of an email, dated June 14, 2020, in which they provided the Landlord with a forwarding address. They submitted a copy of the Landlord's response to that email, in which the Landlord declared that he will respond "no later than June 29, 2020 which is 15 days from the day you provided a forwarding address".

On November 27, 2020 I was advised by the Residential Tenancy Branch that on October 20, 2020, a Residential Tenancy Branch Arbitrator granted the Landlord authority to retain the Tenants' security deposit. The Residential Tenancy Branch file number for that matter was provided to me and appears on the first page of this decision.

Analysis:

On the basis of the information provided to me on November 27, 2020, I am correcting this decision, pursuant to section 78(1)(c) of the *Residential Tenancy Act (Act).* Section 78(1)(c) of the *Act* authorizes me to deal with an obvious error or inadvertent omission in the decision or order.

I find that the Residential Tenancy Branch made an obvious error by scheduling a hearing on October 23, 2020 to consider the Tenants' application to return their security deposit, which is three days after a Residential Tenancy Branch Arbitrator granted the Landlord permission to retain that deposit. I find that this correction is necessary to correct the obvious administrative error made by the Residential Tenancy Branch.

As I am now aware that a Residential Tenancy Branch Arbitrator had already granted the Landlord authority to retain the Tenants' security deposit when this matter came before me on October 23, 2020, I find that the principal of res judicata applied. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

As a Residential Tenancy Branch Arbitrator authorized the Landlord to retain the Tenants' security deposit on October 20, 2020, I was barred from considering the Tenants' application to recover this security deposit on October 23, 2020. I therefore dismiss the application to recover the security deposit, without leave to reapply.

As the application to recover the security deposit is dismissed, I also dismiss the application to recover the fee for filing this Application for Dispute Resolution.

~~**On the basis of the information before me, I find that this tenancy ended on June 01, 2020 and that the Tenants provided the Landlord with a forwarding address, via email, on June 14, 2020.**~~

~~**I find that the Landlord received the Tenants forwarding address in writing when he received the aforementioned email. In reaching this conclusion, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.**~~

~~**Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.**~~

~~**Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.**~~

~~**Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or**~~

served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord responded to the email sent on June 14, 2020 and the Landlord clearly acknowledged receiving the forwarding address in his response, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the information before me, I find that the Landlord has not repaid the Tenants' security deposit.

On the basis of the information before me, I find that the Landlord has not served the Tenants with an Application for Dispute Resolution in which he made a claim against the security deposit.

On the basis of the information before me, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $2,250.00, which includes double the security deposit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply. This decision replaces my original decision of October 25, 2020.

The monetary granted to the Tenants, dated October 25, 2020, is cancelled and is of no force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2020
Corrected: November 27, 2020

Residential Tenancy Branch