Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Veda 800 Kelowna Student Housing c/o Domus Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on August 6, 2020 seeking an order granting a refund of the security deposit. Additionally, they seek recompense of the Application filing fee.

This participatory hearing was convened after an adjudicator of this office determined the full information about the tenancy agreement was not in place to proceed by a direct request proceeding. The adjudicator informed the tenant of this on August 19, 2020. This generated a Notice of Hearing sent to the Applicant tenant. The tenant then informed the landlord of this hearing and served their evidence via registered mail. The landlord prepared documentary evidence in advance of the hearing and likewise forwarded that information to the tenant in advance of the hearing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 8, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions. The parties both confirmed receipt of the other's evidence. They were able to speak to all points raised by the other in this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement for this hearing. The tenant and landlord confirmed the details of the agreement in the hearing. The tenant signed the agreement on March 8, 2020 and the landlord followed with their signature on March 10, 2020. The tenancy was set to begin on September 1, 2020.

The tenancy was set for a fixed term ending on August 27, 2020. The monthly rent was set at $1,175 per month – this is twelve installments for the total term payment of $14,100.

The agreement stipulates a security deposit "due at the signing of this lease" for $500. A receipt copy shows the tenant paid this amount on March 5, 2020. Addendum B provides the security deposit terms; at the top of the document it states that the *Act* is applicable. The second section of the addendum copies the language of section 38 of the *Act*.

The tenant's school study, for which they set the tenancy agreement, was set to begin in September 2020. By mid-March 2020 the tenant received an email from the school that stated all studies would commence online. As a result, the tenant tried to end the tenancy as soon as possible. They sent an email to the landlord on May 26 stating that they were going to terminate. In the hearing the tenant paraphrased the landlord's response was "[the tenant] can't get out of the lease. . . can't do that".

The tenant provided a copy of this email communication to the landlord commencing on that date. This was with the immediate concern about the existing tenancy agreement. A response from the landlord dated May 26, 2020 shows the options available to the tenant in regard to the tenancy. In the hearing, the tenant provided that they heard back from the landlord on August 31, 2020 that a replacement tenant was found.

Regarding the return of the security deposit, the tenant provided detail on their three communications to the landlord:

- a May 26 letter in which they did not include their forwarding address, no response
- a June 29 letter with forwarding address included, no response
- a July 7 registered letter with forwarding address – this letter made the explicit point that the tenant was moving forward with dispute resolution, and they requested double the amount "should [the landlord] fail to comply."

The tenant included two copies of other documents:

- RTB form 47, giving their forwarding address – dated August 5, 2020
- RTB 41 dated August 5, 2020, showing proof of service of the forwarding address – this refers to the July 7 letter, sent by registered mail on July 8, 2020.

The landlord's timeline is as follows:

- May 25: they responded to the tenant, listing options for sublet or lease replacement – there was a $225 administrative fee to do lease replacement
- July 17: they responded to say "in the event a replacement tenant is found. . we agree to return half of your deposit ($250), keeping the other half for our efforts to re-rent the suite."
- August 20: the tenant filed for dispute resolution – the landlord "made it clear that a portion would be returned when and if a replacement is found", considering the tenancy agreement still considered valid
- August 31: the landlord advised the tenant that a replacement tenant was found – the landlord offered to send back the initial security deposit amount of $500 – the tenant did not respond and referred to this December 8 hearing.

In the hearing the landlord provided that their response on May 25 was a standard response to tenants facing pending difficulties and changing circumstances due to a public health emergency situation. They reiterated that this is a tenancy situation not affiliated with the school shift to online study. They reiterated that by the time of late August when they were able to find a replacement tenant was a "very busy time." From their perspective, they did all they could to mitigate the tenant's loss here, and "doing all [they] can to assist."

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the landlord retained $500, the full amount of the tenant's security deposit amount. They made clear their reasons for doing so by way of email to the tenant on May 26, 2020. In that email they stated: "Under these [guidelines and standards provided to us by the provincial Landlord and Tenant Boards], your lease is still a valid contract."

In that same email, the landlord provided that there is a $225 administration fee to conduct a lease replacement. The lease replacement is the only option other than the tenant's own responsibility in finding a sublet arrangement. By July 17, 2020, the landlord offered half of the security deposit back to the tenant, retaining the other half as recompense for the lease replacement work involved. This is in line with the initial message on May 26, 2020.

I find the landlord set their policy with due consideration to the immediate concerns of a public health situation. I find it reasonable for them to consider the contract as still valid – their policy is not set or dictated by the educational institution, even though a large portion of tenants rent for that reason. Therefore, by late May and on through the summer, I find the tenancy agreement was still valid and still in place. I find this was a set policy that was communicated to the tenant in due course. I find this is a matter of policy that is line with the intent and purpose of the tenancy agreement, and the *Act*. Moreover, I find this enacted policy is in line with the tenets of fixed-term tenancy agreements (of which this is one), where the early end to a fixed-term tenancy can only be by landlord and tenant agreement.

For these reasons, I find the tenancy agreement did not end over the summer, and the landlord took over at some point to find a replacement tenant in this situation. Despite this, and despite what they stated in the May 26 email to the tenant, the landlord did not impose any rent payments or charge the $225 replacement fee. Conversely, the landlord *did* offer to pay $500 full amount of the security deposit back to the tenant.

At this point, there was no communication back from the tenant; however, I understand this was in the midst of the dispute resolution process, and I find it reasonable that the tenant did not want to rush to a solution or preclude any legal end to the matter.

By August 31, the landlord attempted to return the security deposit. I find this is with due regard to the "later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing", as set out in section 38. The landlord did not impose the $225 charge for replacement fee and did not initiate the process to make a claim against the security deposit as the *Act* requires.

In line with this, the landlord has complied section 38(1), and is not obligated to pay double the security deposit amount. In light of unexpected changes, I find the landlord acted in good faith and did not violate any stipulation as set out in the *Act*.

For these reasons, I find the tenant is eligible for the return of the security deposit amount, at $500. Because they are successful in their Application, I award the $100 recompense of the Application filing fee.

Conclusion

I order the landlord to pay the tenant the amount of $600. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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

Dated: December 09, 2020

Residential Tenancy Branch