Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding CHERISH AT CENTRAL PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution by Direct Request made by the Applicant on August 14, 2023, pursuant to section 38.1 of the Residential Tenancy Act (the Act). In an Interim Decision dated August 24, 2023, the matter was adjourned to a participatory hearing.

The Applicant applies for the following relief, pursuant to the Act:

- a monetary order for the return of the security deposit; and
- an order granting recovery of the filing fee.

At the beginning of the hearing, DD identified himself as the Executor of the Estate of ED, under the terms of a Will. Although a copy of the Will was not submitted, DD advised it was available and could be submitted to the Dispute Management System. NM did not dispute that DD is the Executor of his mother's Estate. Pursuant to section 64(3) of the Act, and Policy Guideline #43, I amend the name of the Applicant accordingly.

DD attended the hearing. NM attended the hearing on behalf of the Landlord. Both DD and NM provided affirmed testimony.

DD testified the Notice of Dispute Resolution Proceeding package and evidence to be relied on was served on the Landlord. NM acknowledged receipt of these documents.

NM testified that she served the documentary evidence to be relied upon by the Landlord by leaving a copy at the address for service on September 17, 2023. NM provided detail such as the date and time of service, a description of the property, and confirmed the location. Although DD denied receipt of these documents, I find it is more likely than not that they were served in accordance with the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The issue of jurisdiction arose during the hearing. NM testified that the Landlord provides a number of services to residents, including:

- linen service
- meal service
- exercise classes
- utilities
- an emergency pendant response system
- contact 911/family in the event of an emergency
- first aid and CPR in the event of an emergency
- safety checks
- porter services

NM confirmed that the Landlord is not a registered assisted living building. As a result, residents can “age in place.” Residents can receive health care services but those are arranged by residents or family members.

DD submitted that the Residential Tenancy Branch does have jurisdiction. He noted that porter and wound care services are arranged by family through Island Health. DD acknowledged that the Landlord provides emergency pendants, but they are paid for by the residents, as are meals.

Policy Guideline #46 confirms that the Act does not apply to emergency shelters, transitional housing, or housing-based health facilities. Inn this decision, I will address only the question of whether the Landlord is a housing-based health facility. Policy Guideline #46 states:

> There are three requirements for living accommodation to be exempt from the RTA under section 4(g)(v):
>
> 1. the housing is in a health facility,
> 2. hospitality support services are provided, and
> 3. personal health care is provided.
>
> Based on principles of statutory interpretation, each of these three requirements must mean something different. For instance, a “health facility” means something other than providing hospitality support services and personal health care.
>
> To be a “health facility,” general health services should be a primary focus or the feature service of the location. Having a private nurse attend or other employees to conduct safety checks at a rental unit would not qualify it as a “health facility.” The Director will consider whether the facility is licensed or regulated to provide health services or is otherwise operating as a health institution.
>
> Hospitality support services could include providing meals, housekeeping, laundry, social and recreational opportunities, or a 24-hour emergency response system.
>
> Personal health care is considered assistance with aspects of essential everyday activities that are tied to a person’s health or otherwise managing daily aspects of health but are not otherwise a hospitality support service. This could include assistance with bathing, managing medication and diets, behaviour management, or psychosocial supports. Providing personal health care means the facility takes an active role in that care through its staff or contractors.

> A residence that offers minimal services will not meet the requirements for an exemption under section 4(g)(v). For example, providing housekeeping for the units and bringing in a flu vaccine service once a year will not meet the requirements. Similarly, offering a 24-hour emergency response system and agreeing to wait with a tenant until medical assistance arrives would not be sufficient.

After consideration of the evidence and submissions of the parties, I find it is more likely than not the Landlord is not a “health facility” as contemplated under the Act and Policy Guideline #43. While I accept that the Landlord provides valuable services to residents, health services are not a primary focus or the feature service of the location. Instead, I find that health care services are minimal, or are provided by third parties at the request of residents and their families. Changing linens, making emergency calls to 911 or family members, providing first aid, and conducting safety checks is not sufficient to make the Landlord a health facility.

As a result, I find that the Landlord is not exempt from the application of the Act and that I do have jurisdiction to consider the application.

Issues to be Decided

1. Is the Applicant entitled to the return of a security deposit?
2. Is the Applicant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 1, 2019. The Tenant passed away April 18, 2023. The parties agreed the Tenant paid a security deposit of $1,397.50, which the Landlord holds. A copy of the cheque dated June 10, 2019, was submitted into evidence. A copy of a signed Accommodation Agreement was also submitted into evidence.

DD testified that the Landlord was provided with a forwarding address in writing on July 21, 2023. DD testified that a letter, dated July 19, 2023, was delivered to the front desk.

NM acknowledged that the forwarding address was received. However, she testified that the security deposit was held in its entirety due to damage in the rental property, pursuant to the tenancy agreement. NM also advised that the Landlord has applied for dispute resolution in relation to the damage.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Applicant provided the Landlord with a forwarding address in writing in person on July 19, 2023. Therefore, I find the Landlord had until August 3, 2023, to either repay the security deposit to the Applicant or make a claim against it by filing an application for dispute resolution. NM confirmed the security deposit was not repaid to the Applicant. It appears the Landlord did not make a claim for damage until September 13, 2023. The file number for the related proceeding is included above for ease of reference.

Considering the above, I find the Landlord did not repay the full amount of the security deposit to the Applicant or make a claim against it by filing an application for dispute resolution within 15 days after receipt of the forwarding address in writing. Therefore, pursuant to section 38 of the Act, I find the Applicant is entitled to receive double the amount of the security deposit held.

I find the Applicant is entitled to a monetary award of $2,795.00 for double the security deposit ($1,397.50 x 2). Having been successful, I also find the Applicant is entitled to recover the $100.00 filing fee paid to make the application.

Considering the above, I find the Applicant has established an entitlement to a monetary order in the amount of $2,895.00.

Conclusion

The Applicant is granted a monetary order in the amount of $2,895.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 29, 2023

Residential Tenancy Branch