Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for the return of double his security deposit and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to the return of double his security deposit?
Is the landlord entitled to recover the cost of re-renting the unit?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2008 and that the tenant paid a $1,000.00 security deposit in April 2008. The tenancy agreement shows that the tenancy was set for a fixed term, to expire on May 31, 2009. The parties further agreed that on March 9, 2009 the tenant gave the landlord written notice of his intention to vacate the rental unit “due to family matters.”

The tenant testified that on April 9 he sent the landlord a registered letter with his forwarding address, requesting the return of the security deposit. The tenant provided a copy of the registered mail receipt and Canada Post tracking number. The landlord and his agent denied having received the letter. At the hearing I advised the landlord that I would be checking the online tracking system to determine whether the letter had been received. A search of the tracking system shows that the letter was received on April 14 by someone named Rachel. The landlord’s agent testified that the first knowledge she had of the tenant’s forwarding address was when she received the tenant’s application for dispute resolution. The Canada Post online tracking system shows that the application was received and signed for by the landlord’s agent on May 12. The tenant

seeks the return of double his security deposit pursuant to section 38 of the Act.

The tenant made the argument that he vacated the rental unit because of the landlord's ongoing failure to perform repairs or communicate effectively with him. The tenant asked for opportunity to provide evidence of his requests for repairs. I denied the tenant's request and refused to accept any evidence on this issue for reasons which are explained below.

The landlord testified that when he received the tenant's notice, he made every effort to re-rent the rental unit immediately and was successful in establishing a new tenancy beginning April 1. The landlord testified that he has an exclusive contract with a third party through which that third party was entitled to a commission of $875.00 to rent the unit. The landlord provided a copy of the agreement. The landlord further testified that his staff spent time dealing with issues related to the end of the tenancy and re-renting the suite. The landlord claimed that his staff kept track of the hours spent addressing the end of the tenancy and that the time spent had a value of $650.00. The landlord seeks to recover the costs of re-renting the unit.

Analysis

In order to be successful in his claim for the return of double his security deposit, the tenant must prove that a deposit was paid, that the rental unit has been vacated and that he provided his forwarding address in writing. The only undisputed element is whether the landlord received the tenant's forwarding address. Although the landlord and his agent deny having received the tenant's forwarding address, I find that it was received. It does not make sense that one month before he made an application for dispute resolution for the return of his deposit the tenant would have sent the landlord a registered letter if it was not to provide his forwarding address. Canada Post's online tracking system shows that the letter was signed for and while it may have been misfiled, I am satisfied that the landlord or a member of his office staff received the letter. However, even if I am wrong, I note that the tenant's application for dispute resolution contained his forwarding address and was received by the landlord on May 12. The landlord did not apply for dispute resolution to retain the deposit until more than two months later.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of $1,000.00 and is obligated under section 38 to return this amount together with the $10.70 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit. The tenant is awarded $2,010.70.

As for the landlord's claim, I find that the tenant ended the fixed term tenancy prior to the end of the term thereby breaching the contract. I do not accept the tenant's argument that he vacated the rental unit because the landlord had failed to perform repairs. Section 45(3) of the Act provides a specific remedy for tenants who feel that the landlord has breached a material term of the tenancy, requiring the tenant to give the landlord written notice that a material term has been breached, not just requesting repairs, giving the landlord a reasonable time in which to correct the situation and then giving notice advising the landlord that the tenant is ending the tenancy because of the material breach. In this case, the tenant gave a notice advising that he was moving because of "family matters." There is no indication whatsoever that the tenant complied with the requirements of the Act with respect to advising the landlord that he had breached a material term and the potential consequences of same. I find that the landlord acted reasonably to mitigate his losses and find that the landlord is entitled to recover the $875.00 paid to the third party to re-rent the unit. I award the landlord $875.00. However, I find that the landlord has not proven the amount of time spent by his staff nor that it was directly related to the re-renting of the unit. I find that the time spent by the staff should be characterized as fixed overhead and is therefore not recoverable. I dismiss the landlord's claim for $650.00 for the time of his staff.

As both parties have enjoyed at least partial success, I find it appropriate that each

party bear the cost of his own filing fees.

Having made an award in favour of both parties, it is appropriate that one award be set off as against the other. The landlord has been awarded a total of $875.00, while the tenant has been awarded $2,010.70. I therefore issue a monetary order under section 67 in favour of the tenant for $1,135.70. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is awarded $875.00. The tenant is awarded $2,010.70.

Dated August 13, 2009.