

DECISION

Dispute Codes:

MNSD, FF

Introduction

This is the Tenant's application a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- When did the tenancy end?
- Did the Landlord return the Tenant's security deposit, along with accrued interest within 15 days after the later of: the date the tenancy ended; or the date the Landlord received the Tenant's forwarding address in writing?

Background and Evidence

Facts on which the parties agree:

- There were no issues arising out of service of the Notice of Hearing documents upon the Landlord.
- The tenancy started on May 1, 2006. The Tenant paid a security deposit in the amount of \$125.00 on May 1, 2006.
- Monthly rent at the end of the tenancy was \$270.00 per month.
- Rent was due on the first day of each month.

The Tenant gave the following testimony:

- On June 5, 2009, the Tenant gave the Landlord's agent verbal notice that she would be vacating the rental property by the end of June, 2009. The Landlord's agent and the Tenant entered into a verbal agreement that July 5, 2009 would be the move-out date and that the Tenant would pay prorated rent for July 1 to July

5, 2009. The Landlord's agent told the Tenant that she would require the Tenant to provide written notification of her intent to move out.

- On June 5, 2009, the Tenant attended at the Landlord's agent's office to sign a Notice to Vacate Apartment document. The Tenant signed the Notice, without filling in the particulars. The Landlord's agent said she would fill in the document later. The Tenant gave the Landlord her forwarding address.
- The Tenant moved out of the rental unit on June 28, 2009, and returned to the rental unit on July 3, 2009, to finish cleaning and to return the keys.
- The Tenant asked the Landlord's agent for return of her post-dated cheques. The Landlord's agent told the Tenant that she had destroyed them. The Tenant paid full rent for July, 2009.
- On August 10, 2009, the Landlord mailed the Tenant a cheque in the amount of \$129.22, which the Tenant cashed on August 14, 2009. In the same envelope was a copy of the Notice the Tenant had signed on June 5, 2009, but the Notice was not filled out according to the verbal agreement. It had an end-of-tenancy date of July 31, 2009, instead of July 5, 2009.
- The Tenant is applying for a monetary order, calculated as follows:

Double the security deposit	\$250.00
Interest on the original security deposit	\$4.22
Recovery of the filing fee	\$50.00
Less amount Landlord paid	<u><\$129.22></u>
Total	\$175.00

The Tenant's Witness BB gave the following testimony:

- The Witness is the Tenant's husband.
- The Witness was present when the Tenant gave her notice on June 5, 2009.
- The Witness heard the Landlord's agent tell the Tenant that she was late providing her notice, and therefore the Tenant would have to pay rent for the extra 5 days in July.
- The Witness understood that the tenancy ended on July 5, 2009.

The Landlord's agent JF gave the following testimony:

- The Tenant told the Landlord's agent that she was moving out at the end of June. The Landlord's agent told the Tenant that she would require written notification from the Tenant. The Tenant came to the office to sign the Notice to Vacate Apartment, but told the Landlord's agent that she didn't know how to fill out the form. The Landlord's agent filled out the form in the presence of the Tenant and the Tenant signed the completed form.
- The Landlord's agent explained to the Tenant that the tenancy was a month-to-month tenancy and that the end of tenancy would be July 31, 2009. The Landlord's agent believes the Tenant misunderstood what the Landlord's agent meant.

The Landlord's agent EB gave the following testimony:

- The Landlord's agent EB is the President of the Non-Profit Housing Society.
- The Landlord's agent told the Tenant that if the rental unit was re-rented before the end of July, the Landlord would return a pro-rated portion of the July rent. The rental unit was not rented out before the end of July.
- The Landlord's agent JF is the manager/caretaker of the rental unit and does not have the authority to end a tenancy on any date other than the date prescribed by the tenancy agreement and the Act.

Analysis

A security deposit is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38 of the Act provides that the Landlord must either file an Application for Dispute Resolution claiming against the security deposit, or return the Tenant's security deposit within 15 days of the later of: the date the Tenant provided her forwarding address in writing; or the date the tenancy ended. If the Landlord does not comply, the Landlord must pay the Tenant double the security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 5, 2009. The issue at hand is the date that the tenancy ended.

In the case of verbal agreements, when verbal terms are clear and when both the Landlord and Tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party, in this case the Applicant/Tenant, must carry the added burden of proof. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

I find that the Tenant has not substantiated a verbal agreement between the parties that the tenancy ended on July 5, 2009.

In order to be effective, Section 52 of the Act provides that the Notice to End Tenancy must be in writing.

Section 45 of the Act states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenant gave her written notice to end the tenancy on June 5, 2009. Rent was payable under the tenancy agreement on the first day of each month. Therefore, the earliest end-of-tenancy date is July 31, 2009. I find that the tenancy ended on July 31, 2009.

The Landlord provided the Tenant with return of the security deposit, together with accrued interest, on August 10, 2009, which is within the 15 days allowed under Section 38 of the Act. Therefore, the tenant is not entitled to double the security deposit from the Landlord.

The Tenant has not been successful in her application and is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: November 18, 2009.
