Decision

Dispute Codes: MNSD, MNDC

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Did the tenants provide the landlord with written notice that they were vacating the rental unit?
When did the tenants provide their forwarding address in writing to the landlord?
Are the parties entitled to monetary orders as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008 and was set for a fixed term of one year with the option of continuing on a month to month basis thereafter. The parties further agreed that the tenants vacated the rental unit on or about June 20, 2009, their rent for June having been paid in full. Rent was set at $2,015.00 per month and the tenants paid a $1,010.00 security deposit.

The tenants testified that on May 3 they gave the landlord verbal notice that they would be vacating the rental unit at the end of June and that on May 4 they sent the landlord an email, to an address they had previously used to correspond with the landlord, confirming that they would be ending the tenancy at the end of June and requesting that the landlord send a reference to the email address of their real estate agent in Toronto. The tenants testified that they sent the landlord an email with their forwarding addresses as well as sending three letters by regular post on June 13, July 10 and July 26. The tenants presented copies of emails sent to the landlord as well as copies of the letters sent by regular post. The tenants testified that in mid-June the landlord asked them not to be at the rental unit when it was being shown to prospective tenants. The tenants further testified that they also left their forwarding address written on a piece of paper and left with the keys to the rental unit inside the unit when they vacated. The tenants

testified that they repeatedly tried to contact the landlord at her telephone number, through email and by regular post but did not receive any response from her.

The landlord acknowledged that at the beginning of the tenancy she corresponded with the tenants via email, but denied having received any emails whatsoever from the tenants. The landlord stated that she does not use email at all as she finds it unreliable. The landlord testified that she provided the reference to the Toronto real estate agent not in response to the tenants' email, but in response to a telephone request from the agent. The landlord testified that while the tenants had verbally made mention of moving, she did not know for certain that they were moving until the last week of June, at which time she immediately began advertising the rental unit. The landlord testified that she did not recall having told the tenants not to be at the rental unit while she was showing the house. The landlord acknowledged that she received the keys to the rental unit, but denied having found with the keys a paper with the tenants' forwarding address. The landlord insisted that email was not a recognized form of service under the Act and therefore even if an email were found to have been sent, it should not be considered as effective to end the tenancy or to provide the forwarding address. The landlord asserted that she had telephoned the Residential Tenancy Branch for information and had been advised that email was not considered effective service. The landlord testified that the first time she received the tenants' forwarding address was when she received their application for dispute resolution and notice of hearing by registered mail on August 18.

Analysis

While the landlord is accurate in saying that email is not recognized under the Act, section 71(2) confers on me the authority to determine that a document has been sufficiently served for the purposes of the Act.

The positions of the parties are at complete odds with each other, which requires me to make a finding of credibility. I find that on the preponderance of the evidence I must prefer the testimony of the tenants to that of the landlord. There are a number of inconsistencies which lead me to question the veracity of the landlord's testimony. The landlord could not deny having shown the rental unit in mid-June, which leads me to find that the landlord did indeed make a request of the tenants to leave the unit while she was showing it and therefore was aware that the tenants would be vacating at the end

of June. While this does not prove that the tenants gave written rather than verbal notice, it indicates that the landlord was not forthcoming in her testimony that she was unsure whether the tenants would be vacating at the end of the month but rather was showing the unit up to two weeks before she claims to have known that the tenancy was ending. It makes no sense to me that the landlord would show the unit to prospective tenants if she was not certain when the rental unit would be vacant. Further, when the landlord attended at the Residential Tenancy Branch to make her claim against the tenants, the notes of the staff member accepting her claim show that the landlord advised that she had received the forwarding address by text message. When the landlord was asked about this notation, she stated that she had no idea where the staff member could have gotten that idea. I find it highly unlikely that a staff member would invent such a thing and further find it incredible that even if she had, she would happen to come up with an invention that paralleled the tenants' testimony. The tenants' testimony was consistent and straightforward and I accept that they made numerous attempts to contact the landlord via telephone, email and regular post.

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. Even if I were to accept the landlord's testimony that she did not receive the tenants' forwarding address until she received their application for dispute resolution, the tenants' application would have been dismissed with leave to reapply as it was premature to make their application before having provided their forwarding address. The landlord would have had 15 days from August 18 to make her application for dispute resolution in such an event, but instead chose to wait for more than three months to make an application to retain the security deposit. In the interest of expediency I find that it makes sense to deal with the applications altogether.

I find that the tenants provided their forwarding address to the landlord prior to the end of the tenancy and that the landlord failed to make her application within 15 days of the end of the tenancy. However, even if the tenants had not given their forwarding address until they sent it with their application for dispute resolution, the landlord still failed to act within the 15 day time frame as she should have made her application no later than September 2.

I find the landlord is therefore liable under section 38(6) which provides that the landlord

must pay the tenants double the amount of the security deposit. The landlord currently holds a security deposit of $1,010.00 and is obligated under section 38 to return this amount together with the $11.38 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit. I grant the tenants an order under section 67 for $2,031.38, which sum includes the double security deposit and interest. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As for the landlord's claim, for the reasons explained above I find that the tenants provided notice on May 4 that they were vacating the rental unit at the end of June. I accept this notice to be sufficiently served for the purposes of the Act. The landlord's claim for loss of income for July is therefore dismissed.

Conclusion

The tenants are awarded $2,031.38. The landlord's claim is dismissed.

Dated December 03, 2009.