



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, MNSD, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and recovery of the filing fee as well as Orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to present relevant evidence and to respond to submissions of the other party.

The landlord confirmed service of the tenant's Application for Dispute Resolution and evidence. However, it was determined that the landlord had not served her documentary evidence to the tenant and I have not considered the landlord's documentary evidence further. Rather, the landlord was provided the opportunity to provide verbal testimony in response to the tenant's claim.

Issues(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Is it necessary to issue Orders to the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

I heard the following undisputed testimony from the parties. The one year fixed term tenancy commenced on July 1, 2009. The tenant paid a \$1,300.00 security deposit shortly before the tenancy commenced. No move-in inspection took place and the

landlord did not prepare a move-in inspection report. The tenancy ended before the expiration of the fixed term. The tenant paid rent until November 15, 2009 and a new tenancy commenced November 15, 2009. On December 11, 2009 the landlord mailed the tenant a partial refund of the security deposit in the amount of \$385.00 along with a letter dated December 1, 2009 outlining deductions the landlord made for cleaning and damages. The tenant had not provided written authorization for deductions from the security deposit.

The parties were in dispute as to when the tenant provided a forwarding address in writing. The tenant and his wife submitted that on or about November 7, 2009 the tenant provided a forwarding address on a piece of paper and put it in the landlord's mail slot along with a key to the rental unit. The landlord denied receiving the forwarding address or the key as alleged by the tenant.

The landlord submitted that the tenant appeared at the landlord's doorstep on November 12, 2009 to request a move-out inspection but the landlord was unavailable at that time. The landlord offered to do it at a later time but the tenant told the landlord they were on their way to the airport. The tenants refuted the landlord's statement by claiming their passports prove that they were out of the country as of November 7, 2010 and that they could fax a copy of their passports to verify this. I refused to accept evidence after the teleconference call ended but informed the parties I would consider their verbal testimony.

The tenant submitted that on November 22, 2010 a letter was mailed to the landlord with their forwarding address along with a spare key for the rental unit and \$20.00 to cover the cost of forwarding any mail to the tenant.

The landlord acknowledges receiving the tenant's correspondence but claims that she did not receive it until December 4, 2010. In response to the tenant's correspondence the landlord calculated what she believed the tenant was entitled to with respect to the

security deposit and wrote a letter dated December 1, 2009. The landlord claims that the date appearing on the letter is incorrect but the landlord acknowledged that she waited until December 11, 2009 to mail the letter and partially refund the security deposit. The tenant acknowledged receiving the landlord's letter and partial refund on December 18, 2009.

The landlord began making submissions concerning damages to the rental unit. I informed the landlord of her right to make an Application for Dispute Resolution if she wishes to seek compensation for damages from the tenant.

Included in the tenant's evidence package are details of the dispute, proof of service of hearing documents, a copy of the tenancy agreement and addendum, the landlord's letter dated December 1, 2009, a copy of the envelope containing the partial refund and letter that was postmarked December 11, 2009.

Analysis

As the parties were informed during the hearing, the landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord had the legal right to retain any portion of the security deposit. The landlord is at liberty to make a separate application for damages within two years of the tenancy ending.

Section 23 of the Act provides that a landlord must inspect the rental unit with the tenant at the commencement of the tenancy and prepare an inspection report and give a copy of the report to the tenant. This was not done by the landlord. Section 24 of the Act provides that if the landlord does not complete the condition inspection report and give a copy to the tenant the right of the landlord to claim against the security deposit is

extinguished. I find in this case, the landlord lost the right to make any deductions from the security deposit.

Section 38 of the Act provides for the return of security deposits. Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of: the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

At issue in this case is when the tenant provided a forwarding address in writing. The tenant claims this was done before leaving the country on November 7, 2009 yet the landlord claims the tenant appeared at her doorstep on November 12, 2009. I note that the landlord had submitted in writing that the tenant appeared at her residence on November 12, 2009 but her written submission was not served upon the tenant before the hearing. Had the landlord served her submissions upon the tenant prior to this hearing the tenant would have been provided the opportunity to provide copies of his and his wife's passport to corroborate their positions that they were out of the country as of November 7, 2009. While the landlord questioned the relevance of this evidence I find this discrepancy points to credibility.

I am inclined to believe the tenant did leave his forwarding address on a piece of paper along with the key by depositing these items in the landlord's mail slot as he testified. The tenants were willing to provide copies of their passports to support their position that they were not in the country on November 12, 2009 and I found the landlord intentionally withheld her submission from the tenants until the time of the hearing.

Further, I note that the landlord did not make any deduction from the security deposit for an unreturned key which I find is indicative that the landlord did receive the key. Finally, I was unconvinced that the letter written by the landlord was erroneously dated December 1, 2009 as the landlord testified during the hearing.

Considering the above, I found the tenant's submissions forthcoming and more likely that those of the landlord. Therefore, based on the balance of probabilities, I find that the tenant provided his forwarding address to the landlord in writing no later than November 7, 2009 as he testified.

I also find the tenancy ended no later than November 7, 2009 as section 44 of the Act provides that a tenancy ends when a tenant vacates the rental unit.

Since the landlord did not make an application for dispute resolution or return the security deposit to the tenant within 15 days after November 7, 2009 the landlord must now pay the tenant double the security deposit.

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

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|--|--------------------|
| Double security deposit (\$1,300.00 x 2) | \$ 2,600.00 |
| Filing fee | 50.00 |
| Less: partial payment received | <u>(385.00)</u> |
| Monetary Order for tenant | <u>\$ 2,265.00</u> |

The landlord is ORDERED to pay the tenant \$2,265.00 forthwith. To enforce payment the tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in this application. The landlord must pay the tenant \$2,265.00 forthwith. The tenant has been provided a Monetary Order in the amount of \$2,265.00 to serve upon the landlord.

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 16, 2010.

Dispute Resolution Officer