Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit, and the details portion of the application states that the tenants apply for double the amount of the security deposit, and to recover the filing fee from the landlords for the cost of the application.

The named landlord attended and represented the landlord company. Both tenants also attended, and were accompanied by a person who did not give testimony and did not speak at all during the hearing other than to identify that the person was present, but was allowed to remain in attendance to observe and assist the tenants as an advocate. Each of the parties, including the advocate, attended the hearing from different locations and from different phone numbers.

The parties provided evidentiary material in advance of the hearing, however during the landlord's testimony the landlord indicated that no evidence of the tenants was before the landlord. The tenants provided proof of having served the landlord with a copy of all evidence by registered mail on September 20, 2012, being a copy of the registered mail receipt issued by Canada Post which contains the date the registered mail was purchased and a copy of the Domestic Customer Receipt issued by Canada Post with a tracking number, and testified that a copy all of the evidence before me was provided in that registered mail package to the landlords, and I accept that the landlords were served with all evidence. The tenants do not dispute that the landlords' evidence was provided to the tenants.

The parties all gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The first tenant testified that this fixed term tenancy began on November 1, 2011 and was to expire on October 31, 2012, however the tenancy ultimately ended on April 30, 2012. Rent in the amount of $1,150.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided by the tenants. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of $575.00 which is still held in trust by the landlords.

A previous dispute resolution hearing was conducted on August 29, 2012 wherein the landlords had applied for a monetary order for damage to the unit, site or property and for an order permitting the landlord to keep all or part of the security deposit. Both parties have provided me with a copy of that Decision. The Decision determined that the landlords had not established the claim and the landlords' application was dismissed without leave to reapply.

The tenant further testified that a move-in condition inspection report was completed at the outset of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, and the tenants' forwarding address was provided on that form on May 1, 2012. Both parties have provided a copy of the inspection reports, and at move-out the form is dated May 1, 2012 and both copies contain the tenants' forwarding address. The tenant testified that the landlords have not returned the security deposit despite the August 29, 2012 Decision, and the tenants apply for double.

The other tenant testified that if the landlords had made a cheque payable to the tenants for return of the security deposit, the tenants were not aware of it. No cheques were received.

The landlord testified that the tenants are taking advantage of the system. There are inconsistencies with the "RTO" and the landlord has no faith in the Residential Tenancy Branch. The landlord has had a conversation with the director, Residential Tenancy Branch, who agreed that there are inconsistencies but the director couldn't do anything about it. Also, anytime the landlord has received a Decision of the Residential Tenancy Branch the landlord was required to serve a copy on the tenants.

The landlord further testified that the security deposit wasn't returned to the tenants because the landlords were not served with a copy of the Decision by the tenants. The landlord later testified that a cheque was waiting at the office for the tenants but they didn't pick it up. The landlord then testified that there is no cheque currently waiting for the tenants to pick up.

The landlord also testified that although the move-out condition inspection report contains the tenants' forwarding address, sometimes the landlord updates the form with forwarding addresses which may be received at a later date, but did not testify what date the forwarding address was written on the move-out condition inspection report or what date the landlord received it.

The copy of the August 29, 2012 Decision provided by the landlord has someone's handwriting on it that states that the arbitrator "...stated that tenants could not apply for double the deposit because we had made our application in time. None of this was recorded in the decision and tenants were permitted to file for double their deposit."

The landlord also testified that this Decision will result in an application for a Review Hearing by the landlord and Judicial Review. When questioned why the landlord felt it necessary to inform me of those decisions, the landlord simply stated that it was preferable to take this to the highest Court.

During the course of the hearing I attempted to explain to the landlord the requirements and difference with respect to serving other parties with copies of Orders or Decisions, but the landlord indicated that it was not necessary and refused to accept any explanation.

Analysis

Firstly, I find that the landlord outlined no defence to the tenants' application. The landlord's testimony relied entirely on criticising the Residential Tenancy Branch, and had no other purpose.

With respect to the landlord's testimony that the tenants' evidence package was not served on the landlord, as mentioned in the Introduction above, the tenants have provided evidence of having served the landlord by registered mail, and one of the tenants testified under affirmation that the documents sent in that registered mail package included all evidence that is before me. The landlord indicated that the evidence was not before the landlord, but did not testify that the landlord company did not receive the evidence, and did not provide any testimony or evidence to satisfy me what was in the registered mail package if the tenant was not truthful. The landlord has

received the tenants' application and the notice of hearing, as evidenced by the landlord's agent's attendance at the hearing, and I accept the testimony of the tenant that the evidence was also contained in that registered mail package. Further, the landlord chose to not mention the fact until it was time for the landlord to testify. At the outset of the hearing, the parties were asked about the exchange of evidence and the landlord made no mention of it at that time. Therefore, I made a finding that the landlord had been provided with the tenants' evidence package.

The landlord's evidence package contains a copy of the August 29, 2012 Decision, and written upon it in handwriting on the last page is a note with an asterisk which states that the Arbitrator "...had stated that tenants could not apply for double the deposit because we had made our application in time. None of this was recorded in the decision and tenants were permitted to file for double their deposit." The landlord did not indicate any of that during testimony, but I prefer to address that issue. A copy of the Landlord's Application for Dispute Resolution which resulted in the August 29, 2012 Decision, was provided for this hearing. It was filed on June 21, 2012. Both copies of the move-out condition inspection report provided by the parties show that the landlord had a forwarding address of the tenants on May 1, 2012 and the tenancy ended on April 30, 2012. If the landlord had written a forwarding address on the move-out condition inspection report at a later date, the landlord did not provide that testimony, and I accept that it was there on May 1, 2012 because the tenants have a copy. Therefore, I decline to accept that the Arbitrator made any comments about the tenants' ability to apply for double return of the security deposit; the application of the landlord was filed well after the 15 days provided in the *Residential Tenancy Act.* I find that the landlord did not make a claim against the security deposit within the 15 days required by the *Act.*

I have read the Decision of August 29, 2012 and it is clear that the landlords' application for a monetary order and to keep the security deposit in full or partial satisfaction of the landlords' claim was dismissed without leave to reapply. Therefore, the landlords had an obligation to return the security deposit to the tenants. The tenants did not have an application before the Arbitrator at that time, and therefore the Arbitrator did not provide an order in the tenants' favour. The landlord indicated that he was not served with a copy of the Decision, and therefore the landlord did not pay the tenant. The landlord further stated that the Residential Tenancy Branch requires a person to serve a decision or order on the party that is required to pay. The landlord is correct that an order is required to be served, if an order was made and if the party who obtained the order intended to enforce it through Provincial (Small Claims) Court. The *Court Order Enforcement Act* sets out a number of enforcement mechanisms to enforce a judgment, and once an order is made by the Residential Tenancy Branch, before filing it for enforcement with the Courts, the successful party must prove to the Court that the order

has been served on the other party. In this case, the tenant did not have an order to serve on the landlord, and the landlord had an obligation to return the security deposit once learning that the landlord's application to keep it was dismissed.

The tenants have since filed this application, and I accept the evidence and testimony that the landlord received the tenants' forwarding address in writing on May 1, 2012 and the tenancy ended on April 30, 2012. The Decision of the previous arbitration dismissed the landlords' application to keep the security deposit. The landlords have not returned any portion of the security deposit to the tenants and the tenants have applied for double return, and I find that the tenants are entitled to that pursuant to Section 38 of the *Residential Tenancy Act.* Since the tenants have been successful with the application, the tenants are also entitled to recover the $50.00 filing fee for the cost of the application.

I further find that the landlord's statement at the end of testimony referring to applying for a Review Hearing and Judicial Review was made as a threat to intimidate the tenants in an attempt to reach a settlement for less than the tenants' application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,200.00.

This order is final and binding on the parties and may be enforced.

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: December 10, 2012.

Residential Tenancy Branch