Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:
MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed on November 11, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as amended in the hearing by the landlord:

1. An Order to retain the security - Section 38
2. An Order to recover the filing fee for this application ($50) - Section 72.

I accept the landlord applied for loss under the Act (loss of revenue – Section 67) as this is clearly stated in their application.

The tenant filed on February 08, 2013 pursuant to the Act for Orders as follows:

1. An Order for return of *double* the security deposit - Section 38

Both parties attended the hearing and were given a full opportunity to discuss their dispute, settle their dispute, present *relevant* evidence and make *relevant* submissions. Both parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The hearing proceeded on the merits of the parties' applications.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence is as follows. The parties reside a distance in excess of 600 kilometers from one another. The written tenancy agreement states the

tenancy began on April 15, 2012 as a fixed-term tenancy for 1 year - rent in the amount of $825.00 payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit in the sum amount of $825.00 - which the landlord currently retains in trust. There was no move in condition inspection conducted in accordance with the Act.

The tenant sent an e-mail to the landlord on September 01, 2012 that they were vacating. The tenant consequently vacated September 30, 2012. There was no move out condition inspection conducted in accordance with the Act. It is noted the parties reside a distance in excess of 600 kilometers. It is further noted the landlord placed significant or sufficient credibility in the tenant's e-mail notice to vacate - providing evidence they went to great lengths to arriving at the rental unit on the day the tenant vacated.

The landlord testified they subsequently received the tenant's forwarding address via an e-mail from the tenant dated October 23, 2012. The tenant claims they sent the respective e-mail earlier.

The landlord seeks loss of rent revenue for October 2012 in the amount of $825.00 because the tenant breached the fixed-term tenancy. The tenant seeks *double* the original amount of their deposits as per Section 38(6) of the Act.

Analysis

On the preponderance of all the evidence submitted, I find as follows:

Landlord's claim

If a landlord does not conduct the required condition inspections at the start and end of a tenancy as prescribed by the Act and Regulations, the landlord's right to make a claim against the respective deposits is extinguished by Sections 24 and 36 of the Act. As the landlord then cannot claim against the deposits, it is only appropriate that the deposits be returned to the tenant. In this matter, I accept that the landlord is claiming *loss of rent revenue* and the deposits are in trust to be used as set-off for any monetary awards resulting from this dispute.

I find that Section 45 of the Act prescribes what constitutes acceptable Notice to End by a tenant for month to month and fixed term tenancies. I find the tenant did not meet the requirements of acceptable notice to end. However, the Act does not prescribe an automatic penalty, or automatically grants the landlord compensation for the tenant not providing acceptable notice. Rather, Section 7 of the Act states as follows:

7. **Liability for not complying with this Act or a tenancy agreement**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, in this claim Section 7 applies as follows. Section 7(1) states that if a tenant breaches the Act they must compensate the landlord for a loss that results. And, Section 7(2) states that if the landlord claims a loss resulting from the tenant's breach of the Act they must do what is reasonable to minimize the perceived loss. This is referred to as a *duty to mitigate*, or mitigation. The landlord did not provide evidence of mitigation in this matter. Despite the landlord's confidence in the tenant's notice to vacate, the landlord did not act to mitigate losses of rent revenue for October 01, 2012. It was available to the landlord to provided proof of any efforts to re-rent the unit for October 01, 2012. As a result of the above, I find the landlord has not provided sufficient evidence to support their claim for loss of revenue. Therefore, **I dismiss** their application, without leave to reapply.

Tenant's claim

Section 38 of the Act provides, in part, as follows – **emphasis for ease**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address **in writing,**

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that in order for the tenant to be awarded double the security deposit, Section 38(1)(b) states they must have provided a forwarding address *in writing*. I find it was available to the tenant to do so, but they chose to notify the landlord by e-mail. The date of the landlord's filing their application becomes moot. The tenant has not met the test entitling them to double the original amount of the deposit as per the provisions of Section 38 of the Act.

As I previously dismissed the landlord's application, I grant the tenant the *original amount* of their deposits in the sum of **$825.00**, without leave to reapply.

Conclusion

The landlord's application **is dismissed**, without leave to reapply.

I grant the tenant a Monetary Order under section 67 for the sum of **$825.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: February 19, 2013

Residential Tenancy Branch