Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2011 and ended on November 30, 2012. They further agreed that the tenant paid a $425.00 security deposit at the outset of the tenancy and that she provided her forwarding address in writing to the landlord on December 11. The tenant seeks an award of double her security deposit.

On October 31, 2012, the tenant gave the landlord the following notice:

> As November 30th 2012 will be the end of my one year leasing agreement, I Hereby give notice that I will be terminating my tenancy at 103-3819 Shelbourne St. effective
> on November 30th 2012. I am giving you one month notice, in accordance with our rental agreement.
>
> [*reproduced as written, including spacing, capitalization and punctuation*]

The landlord testified that although he received the notice on October 31, he believed that the tenant intended November 30 to be the date on which the one month notice would initiate, thereby ending the tenancy on December 31. The landlord testified that he retained the security deposit in compensation for inadequate notice as the tenant had vacated the unit on November 30 to his surprise.

The landlord further testified that the tenant owed money for parking because he had signed a parking agreement and put it under the tenant's door. The tenant testified that she had not signed the parking agreement and had not parked in the parking space which was the subject of the parking agreement. The landlord argued that the tenant should be held to the agreement regardless of whether she had signed it.

The landlord further testified that the tenant had signed a security deposit agreement at the outset of the tenancy authorizing him to deduct $140.00 from the security deposit. The tenant testified that she recalled having signed such a document, although she did not believe it was for the amount claimed by the landlord. I asked that the landlord fax a copy of that agreement to me after the hearing, which he did.

Analysis

First addressing the document signed at the outset of the tenancy, I have reviewed the security deposit agreement. Section 20(e) of the *Residential Tenancy Act* (the "Act") provides that a landlord may not require that part or all of the security deposit be automatically kept by the landlord at the end of the tenancy. The security deposit agreement not only states that the tenant will pay $140.00 for cleaning of the drapes and carpets, but allows the landlord to deduct the cost of repairing damages and performing cleaning at the current market rate.

Section 5 of the Act provides that parties may not contract out of the Act and that any attempt to do so is of no effect. I find that the security deposit agreement is an attempt to contract out of the Act and relieve the landlord of the requirement to gain the tenant's authorization to make specific deductions from the security deposit. The security deposit agreement purports to allow the landlord to unilaterally determine what deductions are appropriate and to impose this decision upon the tenant.

I find that the security deposit agreement offends sections 5 and 20(e) of the Act and I find that has no effect.

As I explained to the landlord during the hearing, the landlord cannot unilaterally impose a parking agreement upon the tenant. An agreement by definition is a meeting of the minds and without that meeting of the minds, one cannot contractually bind another party.

I do not accept that the tenant gave late notice to end the tenancy. The punctuation in the tenant's notice to end her tenancy clearly shows that the tenant was ending the tenancy effective November 30, 2012 and I find that there is no other way to reasonably

interpret the notice and have the notice still make sense. I find that the tenant's notice was effective to end the tenancy on November 30, 2012.

The question of whether the notice ended the tenancy on November 30 is irrelevant with respect to this application in any event. Section 38(1) of the Act provides that within 15 days of the later of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file a claim to retain the deposit. This obligation is placed upon the landlord regardless of whether he feels he has a legitimate claim against the deposit. In this case, the landlord neither filed a claim nor returned the deposit to the tenant and I find that the landlord wrongfully withheld the deposit.

Section 38(6) provides that a landlord who withholds monies from a deposit in contravention of section 38(1) is liable to pay the tenant double the amount of the deposit.

The landlord currently holds a $425.00 security deposit and I find that the tenant is entitled to recover double that amount pursuant to section 38(6). I award the tenant $850.00.

As the tenant has been successful in her claim, I find that she is entitled to recover the filing fee paid to bring her application and I award her $50.00.

Conclusion

The tenant is awarded a total of $900.00 and I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: March 25, 2013

Residential Tenancy Branch