Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The landlord did not participate in the conference call hearing. The tenant testified that he served the landlord with a copy of his application for dispute resolution and notice of hearing (the "Hearing Documents") by putting the documents in a mail drop box.

Section 89(1) outlines the means of service permissible for serving Hearing Documents and dropping those documents in a mail drop box is not allowed under this section. However, this office received evidence from an unidentified party for this hearing. The evidence consisted of a photocopy of an envelope addressed to the tenant and postmarked December 18, 2012 which was marked by Canada Post "Moved – Return to Sender". The evidence also contained a photocopy of a cheque dated December 14, 2012 in the amount of $260.00.

At the hearing, I asked the tenant whether he had received evidence from the landlord and he stated that he had not. I failed to ask whether he was the party who had submitted this evidence as I had assumed that it had been submitted by the landlord as it seems unlikely that the tenant would have access to an envelope which was addressed to him but returned to the sender by Canada Post.

Section 71(c) permits me to find that a document not served in accordance with section 89 has been sufficiently served for the purposes of the Act. I find it more likely than not that the evidence in question was submitted by the landlord and as the landlord would only have submitted evidence if she was aware of the hearing, I find that this evidence proves that she received the Hearing Documents. The hearing proceeded in the landlord's absence as I found that she had received the Hearing Documents.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant's undisputed evidence is as follows. The tenancy began on November 3, 2012 when the tenant moved into unit 219, paying a $360.00 security deposit. The tenant complained to the landlord about the unit not being clean, maintenance problems and noise from upstairs. On or about November 12, the landlord and tenant agreed that the tenant would move to unit 315. The manager gave the tenant a key, but when the tenant attempted to use the key, it would not work. Because this occurred late at night, the tenant did not attempt to contact the manager that evening, but attempted to telephone the next day. At 1:00 p.m., the tenant was eventually able to open the door using the key. The manager phoned the tenant back at approximately 3:00 and advised that he was returning to the city at 5:00. The landlord gave the tenant a new key upon his return.

The tenant testified that the bathroom door in unit 315 did not close properly and stated that he told the manager about the problem, but nothing was done to repair it.

The tenant vacated the unit on November 30, 2012 and stated that he sent his forwarding address to the manager via a text message sent in late November. In mid-January, the tenant received from the landlord a cheque for $260.00.

The tenant seeks an award of $540.00 for loss of quiet enjoyment, $250.00 for the cost of moving into unit 315 and the cost of moving out of the rental unit and $460.00 as double his security deposit less the amount which was returned in January. The tenant also seeks to recover the filing fee paid to bring his application.

Analysis

I find that the tenant vacated the rental unit on November 30, 2012 and that the landlord received the tenant's forwarding address via text message prior to the time that the tenant vacated the rental unit. Although text messaging is not a recognized means of service under the Act, I am satisfied that the landlord had actual knowledge of the forwarding address, which is proven by the fact that the landlord appears to have attempted to return part of the deposit on December 18.

Section 38 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 deposit in full or file a claim with the Residential Tenancy Branch to retain the deposit. Although the December cheque is dated December 14, as it was not postmarked until December 18, I find that the landlord did not comply with section 38 as the cheque was not mailed until 3 days after the 15 day deadline.

Section 38 goes on to provide that if a landlord fails to comply with the statutorily prescribed timeframe, the landlord is liable for double the security deposit. The security deposit was $360.00; double that amount is $720.00. After deducting the $260.00 which was returned in mid-January, there is a balance of $460.00. I award the tenant $460.00.

Section 28 of the Act provides that tenants are entitled to freedom from unreasonable disturbance. The tenant claims that he lost quiet enjoyment of the unit because of the manager's failure to make repairs in a timely manner. When the tenant lived in unit 219, the tenant made the manager aware of several issues and it appears that within the week period between November 3 and November 12, when the tenant moved into unit 315, the parties came to the conclusion that the tenancy should continue in a different unit. The tenant did not claim that he was forced to move and I conclude that the parties agreed that the move would best address the tenant's concerns. I find that the manager acted reasonably in those circumstances.

Although the tenant appears to have made a habit of putting his complaints in writing, the tenant provided no evidence to show that he complained in writing to the manager about the bathroom door in unit 315. I find insufficient evidence to show that the landlord was aware of the problem with the bathroom door.

With respect to the problem with the key for unit 315, it is clear that the key did not work as well as it should have. However, because the tenant was eventually able to enter the unit using that key and because the manager provided him with a new key within a dozen hours of the time the tenant reported the issue on the morning of November 13, I find that the manager acted reasonably in addressing this issue.

I find that the tenant is not entitled to an award for the cost of moving because (a) he provided no evidence that he suffered any kind of loss as a result of the move and (b) I have found that his move from unit 219 to unit 315 was as a result of an agreement between he and the manager and I find that his move from the building was not caused by any action or inaction of the manager.

I note that the tenant argued that he should be entitled to an award for loss of quiet enjoyment and moving costs in order to teach the landlord a lesson because all of the tenants in the building had complaints about him. The dispute resolution process is a

process by which tenants can request compensation for losses which they themselves experience. It is not a means by which one party can teach another a lesson for acts about which unrelated people have complained.

As the tenant has been only partially successful in his claim, I find it appropriate to award him one half of the filing fee paid to bring his application and I award him $25.00.

Conclusion

The tenant is awarded a total of $485.00. A formal order is enclosed herewith which may be filed in the Small Claims Division of the Provincial Court for enforcement.

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: April 12, 2013

Residential Tenancy Branch