Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESBROOK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover a $600.00 security deposit and a $600.00 pet damage deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

Issue(s) to be Decided

Did the tenant provide a proper forwarding address in writing? Does the landlord's "honest mistake" provide an excuse against the doubling provision?

Background and Evidence

The evidence is not in dispute. The rental unit is a bachelor apartment in a large apartment building. The tenancy started in December 2012 and ended May 31, 2013. The monthly rent was $1200.00 and the landlord received a $600.00 security deposit and a $600.00 pet damage deposit.

The tenant provided her forwarding address in the box provided for it on the move-out condition report completed by the parties during the move-out inspection conducted May 31st.

Unfortunately, that address did not include the "unit number" of the tenant's new premises. The tenant provided the landlord with the unit number in an email later in the day.

On June 11th the landlord mailed the tenant the entire $1200.00 of the two deposits. The landlord used the address in the move-out condition report and, since that address didn't have the unit number, the mail was returned. The landlord re-mailed the deposit money to the corrected address on June 18th. The tenant received the $1200.00 on June 25th, the day after this application was made.

Analysis

Section 38 of the *Act* provides, in part,

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (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;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 38(1)(b), above, requires that the forwarding address be "in writing." The parties had an email relationship, meaning that each had corresponded with the other by email, without any apparent conditions being placed on email messages. The *Electronic Transactions Act*, SBC 2001, c.10 applies to these facts. Section 6 of that *Act* provides,

> 6 A requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is
>
> (a) accessible by the other person in a manner usable for subsequent reference, and
> (b) capable of being retained by the other person in a manner usable for subsequent reference.

I find that by the end of the day on May 31st with the move-out condition report and the tenant's supplemental email, the landlord had the tenant's complete address "in writing."

Section 38(6) imposes a penalty, though the penalty is not drafted in the wording of a regulatory "offence." Nevertheless, I equate it with one because of its penal nature. The subsection requires no proof of intent or recklessness on the part of the landlord. The simple failure to comply, for whatever reason, gives rise to the penalty. I consider the "offence" created by subsection 6 to be in the nature of a strict liability offence.

Due diligence is a defence to a strict liability offence, that is, if the landlord can show that it took all reasonable care to avoid the doing of the prohibited act or if the landlord can show that it reasonably believed in a mistaken set of facts which, if true, would

render the act or omission innocent (*R.* v. *Sault Ste-Marie*, [1978] 2 S.C.R. 1299, per Dickson, J. at 1325-26).

In this case there is no evidence of due diligence. Rather, the mistake came about as the result of a (very minor) lack of thoroughness on the part of the landlord.

Conclusion

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: August 28, 2013

Residential Tenancy Branch