Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dunsmuire Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD

Introduction

This review hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant had applied for a monetary Order requesting return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the review hearing held on December 13, 2013; only the tenant attended the February 17, 2014 adjourned review hearing. At the initial review hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the start of the February 17, 2014 hearing the tenant was reminded that she continued to provide affirmed testimony.

Preliminary Matters

On October 10, 2013 a decision was issued resulting in a monetary Order to the tenant for double the security deposit, less an amount previously returned. The landlord then applied for review consideration and this review hearing was ordered.

At the start of the December 13, 2013 review hearing the parties each confirmed receipt of documents Ordered served to the other as part of the review application decision that was issued on October 28, 2013.

The parties were provided with an explanation of the possible outcomes of the review hearing; that the original decision issued on October 10, 2013 would either be confirmed or set aside in favour of a new decision.

Background and Evidence

The tenancy commenced on June 1, 2011, a security deposit was paid in the sum of $450.00. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed; copies of that report were not supplied as evidence by either party.

The tenant stated that she did sign a move-out condition inspection report that indicated she agreed to deductions from the security deposit; however the section of the report that indicated a sum to be deducted was not completed.

The tenant and landlord agreed that the tenant was allowed to end the tenancy effective June 15, 2013 and that rent for one-half of that month would be payable.

The tenant said that after she vacated on June 15, 2013 she received $181.27 of the deposit paid. The tenant then applied for dispute resolution requesting double the security deposit, less the sum returned.

The landord stated that the tenant had agreed to pay the cost of carpet cleaning and paint touch-ups and that her letter issued to the landlord, dated May 29, 2013 indicated an agreement had been reached. A copy of the letter supplied as evidence indicated that the tenant would vacate on June 15, 2013 and that “as per your generous offer, I expect that I will not be penalized for leaving on notice of less than 30 days...the refundable portion of my damage deposits should be sent to...”

Pursuant to section 6.3 of the Residential Tenancy Branch (RTB) Rule of Procedure, after forty minutes of testimony was provided, the review hearing was adjourned. The tenant was Ordered to provide the RTB and the landlord with a copy of the move-out condition inspection report, which she had in her possession. The tenant agreed to supply a copy to the RTB by December 16, 2013 and to send the landlord a copy, via registered mail, by December 16, 2013. The landlord was entitled to make a written rebuttal to that inspection report, which must be given to the tenant and RTB at least 5 days prior to the date of the adjourned hearing.

At the reconvened review hearing only the tenant attended. The reconvened hearing was scheduled to commence at 10:30 a.m.; the tenant was present at the start of the hearing. By 10:40 a.m. the landlord had not entered the conference call and the hearing was ended.

During the reconvened hearing the tenant testified that since the hearing held on December 13, 2013, she had not received any additional evidence from the landlord. The tenant was informed that the landlord had supplied the RTB with a 7 page submission which included a copy of the move-in condition inspection report and a

typed submission suggesting the tenant had created the inspection report she had provided to the landlord.

Copies of what the tenant submits was the original condition inspection report signed at move-in and move-out, was supplied as evidence by the tenant. On June 15, 2013 the tenant signed the "security deposit statement" portion of the report, which indicted a deposit paid in the sum of $445.00. No agreed deductions were listed on the report. A signature for the landlord was included on the form; the tenant said it was signed by A.R. the building manager. The building manager also dated the inspection report.

Analysis

I have considered the submission made by the tenant and the landlord and, pursuant to section 82(3) of the Act, I confirm the decision and Order issued on October 10, 2013.

In reaching this decision I agree with the analysis contained in the October 10, 2013 decision:

> *The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the tenants. Here the landlord did not have any such authority to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or pet damage deposit, and under section 38 I must order the landlord to pay the tenant double her security deposit.*

During the review hearing the landlord had submitted the tenant had agreed to deductions from the deposit. Section 38(4) of the Act provides:

> *(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
>
> > *(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
> >
> > *(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*
>
> (Emphasis added)

There was no evidence before me that indicated the tenant had agreed, in writing, to any specific deduction from the security deposit. The landlord is responsible for completion of condition inspection reports but was unable to provide a copy of the move-out inspection report, or any other document, which contained written agreement

to a deduction from the deposit. There was no evidence before me that indicated the tenant had agreed, in writing, to a deduction from the deposit. The landlord was at liberty to provide evidence of such a written agreement, but did not do so. The suggestion of agreement is not the equivalent to written agreement.

Conclusion

The decision and Order issued on October 10, 2013 is confirmed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2014

Residential Tenancy Branch