Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for money owed or compensation for damage or loss, for "other", and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. The Agent for the Tenant spoke on behalf of the Tenant, who is her mother. At the conclusion of the hearing the Landlord expressed concern that the Tenant had not spoken during the hearing and may not be present. The Agent for the Tenant stated that the Tenant had left prior to the conclusion of the hearing. I find this largely irrelevant, as the Agent for the Tenant has acted on behalf of the Tenant on many occasions during this tenancy and clearly has the right to represent the Tenant in these matters.

The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Tenant stated that on, or about, January 22, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord stated that she did receive the Application for Dispute Resolution and the Notice of Hearing, via regular mail, sometime in January of 2014. As the Landlord acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

The Landlord stated that she did not receive documents the Tenant wishes to rely upon as evidence when she received the Application for Dispute Resolution. The documents were described to her, at which time she acknowledged receiving those documents, although she cannot recall when they were received. As the Landlord acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On April 08, 2014 the Tenant submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that she served all of these documents to the Tenant, with the exception of a written submission dated April 01, 2014. As the written submission was not served to the Landlord, it was not accepted as evidence for these proceedings. The Landlord acknowledged receiving the remainder of the documents that the Tenant submitted to the Residential Tenancy Branch on April 08, 2014 and they were accepted as evidence for these proceedings.

On March 04, 2014 the Landlord submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Landlord stated that she served these documents to the Tenant, via registered mail, on March 05, 2014. The Agent for the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 31, 2014 the Landlord submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Landlord stated that she delivered these documents to the home of the Agent for the Tenant on April 08, 2014. The Agent for the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 08, 2014 the Landlord submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Landlord stated that she delivered these documents to the home of the Agent for the Tenant on April 08, 2014. The Agent for the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 08, 2014 the Landlord submitted a single document, dated April 08, 2014, to the Residential Tenancy Branch. The Landlord stated that she also delivered this document to the home of the Agent for the Tenant on April 08, 2014. The Agent for the Tenant stated that this document was not received. After repeatedly advising me that this particular document was delivered to the Agent for the Tenant's home, the Landlord stated that she did not understand this document needed to be served to the Tenant and that it was never delivered to the Agent for the Tenant's home. As the document was not served to the Tenant it was not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit and a rent refund?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on January 01, 2013 and that the Tenant did not occupy the rental unit until January 20, 2013. The parties agree that the Tenant agreed to pay monthly rent of $1,400.00; that rent was due by the first day of each month; and that a security deposit of $700.00 was paid.

The Agent for the Tenant stated that on October 31, 2013 she sent an email, with an attachment, to the Landlord. She stated that the attachment was a letter in which she informed the Landlord the tenancy would be ending on December 31, 2013. The Tenant submitted a copy of this email and the attachment. In the email the Agent for the Tenant wrote, in part, "Please see the attached notice".

The Landlord stated that she received the email from the Agent for the Tenant, dated October 31, 2013, but she did not receive the attachment. She stated that she never received written notice that this tenancy was ending and she contends that the Tenant "abandoned" the rental unit.

The Agent for the Tenant submitted a copy of the Landlord's response to the Agent for the Tenant's email of October 31, 2013, in which the Landlord wrote, in part:

> "please accept this email as my confirmation that I have received notice from you that your parents will be moving out of the condo as stated at the end of the tenancy agreement December 31, 2013, and that sufficient notice has been given for such move out".

The Landlord and the Tenant agree that the keys to the rental unit were returned to the Landlord on December 03, 2013.

The parties agree that rent was paid for the month of December.

The Landlord and the Tenant agree that the parties made a verbal agreement that the Landlord would refund a prorated portion of the rent if the Landlord received rent from another occupant for the month of December. The Landlord stated that the agreement was contingent upon the Tenant repairing the walls and cleaning the carpets. The Agent for the Tenant stated that the agreement was not contingent on repairing any damage or completing any cleaning.

The Landlord stated that she did find a new occupant for the rental unit and that the new occupant moved some of his property into the rental unit on December 14, 2013. She stated that she did not collect rent from the new occupant for the month of December for the following reasons:

- the fridge was not working and was not repaired until the middle of January
- the stove was not working and was not repaired until "around" Christmas
- the storage unit was not available to the new occupant until sometime in January
- the new occupant was paying rent at his former residence.

The Tenant submitted a letter from an individual who declared that he observed a tenant move property into the rental unit on December 14, 2013. The Agent for the Tenant stated that she has no evidence to show that the new occupant paid rent for December of 2013.

The Landlord stated that the Agent for the Tenant gave her written permission, via email, to retain the cost of repairing a garburator from the security deposit. The Agent for the Tenant stated that the Tenant did not give the Landlord authority to retain any portion of the security deposit. The Landlord was unable to locate an email in which the Tenant or her agent agreed that the Landlord could retain a specific amount from the security deposit or in which the Tenant or her agent agreed to pay for the repair of the garburator.

The Agent for the Tenant stated that they discussed the Tenant paying to repair the garburator and that she asked for a receipt for this repair, but she never agreed to pay for the repair. Emails were submitted in evidence that clearly show the Agent for the Tenant did ask for a copy of the receipt for this repair.

The Landlord and the Tenant agree that on December 16, 2013 the Agent for the Tenant sent the Landlord an email, in which she informed the Landlord that the rental unit could be used as a forwarding address, as the Tenant had made arrangements for Canada Post to forward the Tenant's mail. The parties agree that on January 07, 2014 the Landlord was advised that there was a delay with the mail being forwarded by Canada Post and that the security deposit could be mailed to an alternate address.

The Landlord stated that on December 18, 2013 she mailed a cheque, in the amount of $505.00, to the rental unit. She stated that this cheque was returned by Canada Post. She stated that on January 08, 2014 she mailed a cheque, in the amount of $505.00, to the alternate address that she received on January 07, 2014. The Agent for the Tenant acknowledged receiving the cheque that was sent to the alternate address.

Analysis:

On the basis of the testimony of the Agent for the Tenant and the email communications dated October 31, 2013, I find that on October 31, 2013 the Agent for the Tenant provided the Landlord with written notice that the Tenant was ending this tenancy on December 31, 2013. I find that the Landlord's testimony that she did not receive the written notice is entirely unbelievable, as her response to the Agent for the Tenant's email clearly indicates receipt of the notice.

As the Tenant returned the key to the rental unit on December 03, 2013, I find that the tenancy ended on that date, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act*. Section 44(1)(d) of the *Ac*t stipulates that a tenancy ends when a tenant abandons or vacates a rental unit.

Section 26 of the *Act* requires a tenant to pay rent when it is due. I therefore find that the Tenant was obligated to pay rent for the month of December of 2013, as the tenancy had not ended by the time the rent was due on December 01, 2013. There is nothing in the *Act* that requires a landlord to refund rent that was paid, even if a tenant opts to vacate the rental unit early and the landlord is able to find a new occupant for

the unit.

In some circumstances rent must be refunded if the parties agree that rent will be refunded. The burden of proving that the parties reached an agreement regarding the refund and that all of the terms of the agreement were met rests with the party who is seeking to enforce the terms of the agreement.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant agreed that the Landlord would refund a prorated portion of rent for December if the Landlord received rent from another occupant for the month of December. I find that there is insufficient evidence to conclude that the Landlord received rent from another occupant in December. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Landlord's testimony that the new occupant was not required to pay rent in December. As there is insufficient evidence to show that the Landlord received rent for December from another occupant, I dismiss the Tenant's claim for a rent refund.

Section 38(4)(a) of the *Act* authorizes a landlord may retain an amount from a security deposit or a pet damage deposit if 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. I find there is insufficient evidence to establish that the Tenant provided the Landlord with written authorization to retain an amount from the Tenant's security deposit. I therefore find that the Landlord did not have the right to retain any portion of the Tenants' security deposit in accordance with section 38(4)(a) of the *Act*.

While I accept that the parties discussed the Landlord's desire to retain a portion of the security deposit in compensation for damage to the garburator, the Landlord did not present any evidence to support her testimony that the Tenant agreed, in writing, to allow the Landlord to deduct any money from the security deposit for those repairs. I specifically note that a request for a copy of the receipt for repairs does not constitute an agreement to pay for the repairs.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act,* as the Landlord has not yet repaid the full security deposit and she has not filed an Application for Dispute Resolution. To be in compliance with section 38(1) of the *Act* in these circumstances, the Landlord would have had to refund the full deposit or file an Application for Dispute Resolution within fifteen days of receiving the forwarding address on December 16, 2013.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act,* the Landlord must pay the tenant double the amount of the security

deposit. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion:

The Tenant has established a monetary claim of $1,450.00, which is comprised of double the security deposit and $50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the $505.00 security deposit refund that has already been provided to the Tenant.

On the basis of these findings, I grant the Tenant a monetary Order for $945.00. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: April 17, 2014

Residential Tenancy Branch