



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the balance of her security deposit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The tenant attended the teleconference hearing and gave evidence, however the landlords did not attend. The tenant gave evidence that she served the landlords with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on April 16, 2014. I find the landlords were properly served.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Background and Evidence

The tenant gave evidence that the tenancy started in November 2012 and was for a one-year fixed term ending November 30, 2013. The tenant was obligated to pay rent of \$850.00 monthly in advance on the first day of the month for most of the tenancy; the rent increased to \$875.00 for the month of November 2013. The tenant states she also paid a security deposit of \$425.00.

The tenant gave evidence that she moved out of the rental unit at the end of November 2013. The tenant's evidence is that she provided her forwarding address to the landlords in writing by sending it by registered mail on December 12, 2013. The tenant provided a copy of the December 12, 2013 letter in evidence.

The tenant gave evidence that the parties participated in a move-out inspection on November 28, 2013. She states she told the landlords at the time that she did not agree with their assessment of damages. However she signed the Condition Inspection Report and requested a copy. The tenant says she did not receive a copy of the Condition Inspection Report. Her evidence is that the landlords gave her a cheque for \$125.00 at the end of January 2014.

She claims the \$300.00 balance of her security deposit.

The landlords sent the following correspondence to the RTB:

- May 15, 2014 letter advising that the landlords are not available due to prior scheduled work commitments, requesting that the hearing be rescheduled, and copying the tenant asking her to confirm her agreement
- June 4, 2014 letter indicating that the May 15, 2014 letter was delivered to the tenant
- July 23, 2014 letter which provided information on the landlord's position regarding the security deposit, and which contained the following information regarding the landlords' request for an adjournment: "I, [female landlord], cannot be available due to my work. I am a tour director, and on August 13th will be on a coach with passengers all day making it impossible to participate in a conference call. I will be on tour until September 5, travelling in B.C., Alberta, and Alaska. I do not have a job with regular lunch breaks. I am with passengers at all times for the duration of the tour."
- July 24, 2014 letter to advise the July 23, 2014 documents were delivered to the tenant
- August 12, 2014 letter advising "Neither MS [female landlord] nor I, [male landlord] are available for tomorrow, August 13th, 11 am hearing. We request that it be rescheduled to a Monday or Wednesday in September, after September 8th". The letter also contained submissions regarding the end of the tenancy.

The tenant gave evidence that she did not agree to an adjournment because she had already arranged to take the day off work.

Analysis

The process to seek rescheduling of a hearing is set out in Rule 6 of the Residential Tenancy Branch Rules of Procedure, which states in part:

6.1 Rescheduling a dispute resolution proceeding by consent more than three days in advance

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution proceeding.

6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding by:

- a) submitting to the Residential Tenancy Branch, at least 3 business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or
- b) having an agent represent[ing] him or her attend the dispute resolution proceeding to make a request to the arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

In this case, the landlords requested the tenant's consent to reschedule but the tenant did not respond to the request. Since there was no consent to an adjournment, the hearing commenced at the scheduled time pursuant to Rule 6.2. Turning to Rule 6.2(a), the landlord did submit several pieces of correspondence at least 3 business days in advance of the hearing. The May 15, 2014 letter contains a request for an adjournment, and the July 23, 2014 letter contains some information regarding the relevant circumstances for one of the landlords. The August 12, 2014 letter was not submitted at least 3 business days in advance, but I note that it does not contain any further details regarding the circumstances at issue.

I considered the landlords' request for an adjournment. The criteria that I must consider are set out in Rule 6.4, as follows:

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral and written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking an adjournment; and
- e) the possible prejudice to each party.

Per a): I have considered the submissions of both parties. The landlords did not provide any details of what circumstances prevented the male landlord from participating in the scheduled hearing on behalf of both landlords, or whether there was any reason why the female landlord's presence was required as well.

Per b): Although the purpose for which the adjournment is sought (so that the landlords may attend) would normally contribute to a fair process, in this case it does not appear that the landlord's presence would impact the outcome of the hearing. There is no indication in the evidence submitted by the parties, or which I am able to locate in the RTB case management database, that the landlords filed an application for dispute resolution to claim part or all of the security deposit. In that case, the operation of Section 38 is quite straightforward as is explained below.

Per c): I find the landlords had sufficient notice of the dispute resolution hearing (about three months). Again, the law concerning the subject matter of the dispute (the return of a security deposit) as set out in Section 38 is quite straightforward and any submissions by the landlords would not impact the outcome. The only way in which the landlords' submissions might impact the outcome is if I am wrong and the landlords did file an application for dispute resolution to claim all or part of the security deposit within the time limit.

Per d): I am unable to determine whether the need for an adjournment arises out of the intentional actions or neglect of the party seeking the adjournment.

Per e): I find there would be prejudice to the tenant in granting the adjournment, since it has been about 8 months since the relevant events as outlined below. I find there is no prejudice to the landlords in denying the adjournment, since it does not appear that their oral evidence could impact the outcome.

After considering the above factors, I did not grant the landlords' request for an adjournment and proceeded with the hearing in their absence.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on November 30, 2013. I accept the tenant's evidence that she sent her forwarding address by mail on December 12, 2013, and I find the landlords received it on December 17, 2013. The landlords did not apply for dispute resolution to make a claim against the security deposit within 15 days of December 17, 2013. Also, the tenant did not agree in writing to the retention of any part of the security deposit. The landlords are therefore obligated to return the entire security deposit to the tenant.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlords failed to repay the tenant

the amount of \$300.00 from her security deposit. The tenant is therefore entitled to an order for twice that amount, which is \$600.00. The tenant is also entitled to recover her RTB filing fee of \$50.00 from the landlords.

I grant the tenant an order under Section 67 for \$650.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$650.00.

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 19, 2014

Residential Tenancy Branch

