



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NELSON CARES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the unit; unpaid rent or utilities; to keep the Tenant’s security deposit and to recover the filing fee for the cost of making the Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony during the hearing and also submitted written evidence prior to the hearing. The Landlord’s agent was also permitted, under Rule 11.5 of the *Rules of Procedure*, to provide a copy of the move in Condition Inspection Report (the “CIR”) after the hearing.

There was no appearance by the Tenant during the thirty minute duration of the hearing and there was no submission of written evidence by the Tenant prior to the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlord’s agent testified that the Tenant had been personally served with a copy of the Application and the Notice of Hearing documents on April 17, 2014. Based on the undisputed testimony of the Landlord’s agent, I find that the Tenant was served with the documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

The Landlord’s agent explained that the agent who facilitated this tenancy was not available for the hearing and as a result, the monetary claim for damages to the rental unit was being withdrawn for reconsideration. As a result, I amended the Landlord’s Application to remove the Landlord’s claim for damages to the rental suite, pursuant to Section 64(3) (c) of the Act.

As a result, the hearing continued in the absence of the Tenant and the Landlord’s undisputed evidence was carefully considered in this decision.

Issue(s) to be Decided

- Did the Landlord deal with the Tenant's security deposit in accordance with the Act?
- Has the Tenant extinguished their right to the return of the security deposit?

Background and Evidence

The Landlord's agent testified that this month to month tenancy started on September 1, 2010. The Tenant paid a security deposit of \$526.00 which the Landlord still retains. The rent payable was subsidised by a third party organisation and the Tenant's rent contribution was \$665.00 which was payable on the first day of each month. The Landlord completed a move in CIR on November 17, 2010 which was provided in written evidence for the hearing.

The Landlord's agent and the written evidence explains that the Tenant was served with a notice to end the tenancy for cause which was not contested by the Tenant. The parties agreed that the Tenant would vacate the rental suite at 1 pm on February 28, 2014 which would be the date the move out condition inspection would be conducted. The Tenant was provided with written notification of the cleaning requirements for the rental suite and the requirement to return the rental unit keys.

However, the Tenant approached the Landlord's agent on February 26, 2014 informing that she would not be able to move out by this date. As a result, the parties agreed to change the move out date and condition inspection to March 3, 2014 at 12:45 pm. However, the Tenant failed to appear for this date and time.

The Landlord's agent left a note asking her to make contact but instead the Tenant left the rental unit keys in the night security box without any contact number or forwarding address. The Tenant also left a note inside the rental suite explaining that she did not have time to clean the suite.

The Landlord's agent explains that the Tenant had left a considerable amount of damage to the rental suite. The Landlord's written evidence indicates that the agent attempted to contact the Tenant through the third party organisation that subsidized the Tenant's rent in an effort to do the move out inspection report on March 4, 2014, but the Tenant again failed to appear.

The Landlord's agent testified that after this time, the Tenant did provide a forwarding address in writing but was unable to confirm the exact date this was provided by the

Tenant. The Landlord's agent provided a letter submitting that the Landlord's Application was made within 15 days of receiving the Tenant's forwarding address.

The Landlord's monetary claim for unpaid rent is for \$61.25, being the prorated amount the Tenant owes in rent due to over holding into March, 2014.

Analysis

I accept the undisputed evidence of the Landlord that the Tenant provided a forwarding address in writing and that the Landlord made an Application to keep the Tenant's security deposit within the allowable time limits stipulated by Section 38(1) of the Act.

I also accept the Landlord's evidence that the Tenant was over holding the tenancy for a period of three days and therefore the Tenant is liable for the amount of pro-rated rent claimed by the Landlord.

Section 36(1) of the Act states that the right of a Tenant to the return of the security deposit is extinguished if the Landlord provided an opportunity for the Tenant to attend the condition inspection and the Tenant had not participated. Part 3 of the Residential Tenancy Regulation provides further instructions on how condition inspections are to be arranged and conducted.

In relation to the Act, I accept that the Landlord provided the Tenant an opportunity to attend the move out inspection on February 28, 2014 which was then rescheduled with the consent of the parties for March 3, 2014 at 12:45 pm.

I find that the Tenant failed to appear for the re-scheduled time and failed to notify the agent that she would be unable to attend or suggest an alternative date and time which could have been accommodated or considered by the Landlord for another opportunity for the Tenant to participate. The Landlord went further beyond her obligations in attempting to give the Tenant an opportunity to attend another move out condition inspection on March 4, 2014, but again the Tenant failed to appear.

As the Landlord has been successful in proving the claim and the Tenant failed to appear for the hearing, I find that the Landlord is also eligible to the Application filing fee in the amount of \$50.00; pursuant to Section 72(2) (b) of the Act, this amount can be achieved by the Landlord deducting it from the Tenant's security deposit.

Policy Guideline 17 to the Act explains that if the amount awarded to the Landlord from a Tenant's deposit does not exceed the amount of the deposit, the balance maybe retained by the Landlord if the Tenant has forfeited the right to its return.

Conclusion

For the reasons set out above, I find that the Tenant extinguished her right to the return of the security deposit pursuant to Section 36(1) of the Act, and therefore there is no requirement for the Landlord to return the Tenant's security deposit which can now be retained by the Landlord.

The Landlord is at liberty to make an Application for damages to the rental suite.

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 18, 2014

Residential Tenancy Branch

