Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The original hearing for this dispute was scheduled to take place on June 5, 2014 in response to an Application for Dispute Resolution (the "Application") made by the executor of the deceased Tenant (the "Applicant") for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); for the return of double the security and pet damage deposits and to recover the filing fee.

On June 5, 2014 the Landlord appeared for the conference call hearing but the Applicant did not. As a result, the Arbitrator who had conduct of the hearing dismissed the Application.

The Applicant made an application for a review of the decision on July 4, 2014. On July 15, 2014 the Arbitrator who had conduct of the review application granted the Applicant a new hearing and issued the Tenant with Notice of Hearing documents to serve to the Landlord.

The Applicant, an agent for the Landlord and the property manager appeared for this hearing and provided affirmed testimony during the hearing. The parties had also submitted written evidence prior to the original hearing.

Preliminary Issues

The Tenant was unsure as to when she had received the Notice of Hearing documents from the Residential Tenancy Branch but testified that it was sometime early in August, 2014 and that she had sent the notice of hearing documents to the Landlord by registered mail on August 7, 2014; the Tenant provided the Canada Post tracking number as evidence for this method of service during the hearing.

The Landlord submitted that the Application should be dismissed because the Tenant had failed to serve the required documents for this hearing within three days of

receiving them as required by the instructions on the review decision dated July 15, 2014. However, the Landlord agreed that the issues would likely come before the Residential Tenancy Branch if they were not to be resolved in this hearing and agreed to continue with the hearing.

The parties were given an opportunity to resolve the dispute through mutual agreement. However, after a lengthy discussion the parties were unable to reach resolution.

The parties were informed of the hearing process and were asked if they had any questions. While both parties submitted a large amount of written evidence prior to this hearing, only the relevant portions are referred to in this decision.

Issue(s) to be Decided

- Is the Applicant entitled to double the amount of the security and pet damage deposits?
- Is the Applicant entitled to monetary compensation for utilities paid but not used by the Tenant?

Background and Evidence

Both parties agreed that this tenancy started for the Tenant on February 1, 2013 for a fixed term of one year after which it was to continue on a month to month basis. Rent for the Tenant was payable under the written tenancy agreement in the amount of $1,100.00 on the first day of each month. The Tenant paid a $550.00 security deposit and a $500.00 pet damage deposit at the start of the tenancy in 2013.

The Applicant explained that on December 23, 2013 the Tenant passed away and it was only until December 28, 2014 that the Applicant and her family became aware that the Tenant had passed.

As a result, the Tenant's family entered the suite, vacated the rental suite and handed the keys back to the Landlord in early January, 2014. The Tenant explained that her family, who were the executors of the Tenant, paid the January, 2014 rent after verbally informing them that the tenancy was going to end in accordance with the fixed term tenancy.

The Applicant testified that her grandmother had contacted the Landlord and provided him with a forwarding address over the phone.

The Applicant testified that on January, 9, 2014, she sent the Landlord a letter asking for a copy of the Condition Inspection Report (the CIR), which had been completed by the Landlord on his own on January 6, 2014, to be mailed to a forwarding address provided on a note. The Tenant was unable to provide a copy of this note in written evidence.

The Applicant testified that she received a phone message from the Landlord who acknowledged receipt of the letter and that they would be making deductions from the security deposit and returning the balance outstanding.

The Applicant testified that on February 17, 2014 she received a cheque which was sent to the forwarding address provided on the note and over the phone, in the amount of $136.51 from the Tenant's deposits of $1,100.00. As a result, the Applicant now claims double the amount of the deposits back from the Landlord.

The Landlord's agent testified that they had not received a forwarding address from the Applicant in writing. The Landlord's agent testified that they were not aware that the Applicant was the executor of the Tenant until they were served with the original Application and that they had been in contact with other family members who had provided the Tenant's forwarding address verbally.

The Landlord's agent testified that he made deductions from the Tenant's deposits because of damages to the rental suite, cleaning of the suite and appliances, repairs completed and unpaid utilities. The Landlord's agent testified that as the Applicant had not provided a forwarding address in writing, there was no requirement for them to deal with the Tenant's security deposit in accordance with the Act.

The Applicant testified that the Landlord had failed to put the utilities back into their name for the month of January, 2014 and as a result, the Applicant had to pay the Tenant's utility bills for the period of time that she was deceased and they were not in possession of the rental suite and the keys to the unit. The Tenant acknowledged that by the time the Tenant had passed at the end of December, 2013, the Tenant was in utility arrears in the amount of $307.79. However, the Applicant provided written evidence that this amount was fully paid in February, 2014. However, the Applicant now claims back the utilities paid for the month of January, 2014 for a total amount of $179.43 comprising of electricity and gas costs ($101.86 and $77.57 respectively). The Applicant provided utility bills in support of the utility costs paid.

While the Landlord's agent did not have confirmation of the utility payment made by the Tenant for the utility arrears of the Tenant, he acknowledged the written evidence

before me that this amount was paid. In respect of the amount of utilities claimed by the Tenant for the month of January, 2014, the Landlord did not dispute the amounts claimed but submitted that these should be paid by the Applicant as she is responsible for the tenancy as the executor until the end of January, 2014.

Analysis

Section 38(1) of the Act states 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 repay the deposits or make an Application to claim against them.

The Landlord's agent relies on the fact that the Applicant failed to provide him with a forwarding address **in writing** and that there was confusion over who was dealing with the tenancy after the Tenant had passed, as several different family members were involved.

While there is not conclusive evidence to show that the Landlord was served with a forwarding address in writing, I am satisfied that the Landlord was aware of the address to send documents to as this is the address that he had sent a copy of the move out CIR to the Tenant. The Landlord completed the move out CIR on January 6, 2014 and the copies of the CIR submitted by both parties show the Tenant's forwarding address which was noted under the 'Tenant's Forwarding Address' section of the CIR.

Based on the foregoing, the key finding I make in this case is that the Landlord used this address, which according to him had been provided verbally, to deal with the Tenant's deposits by making deductions from them and returning the outstanding amount to the address provided. I also find that by noting the address on the move out CIR as the Tenant's forwarding address was sufficient for the purposes of putting the Landlord on notice of an address which the Landlord could have used to make an Application to claim against the deposits.

The Landlord's agent testified that he had not received a forwarding address in writing, so if this had been the case then, under the Act, there was no requirement for the Landlord to make deductions and return any of the deposits until the Applicant had satisfied this requirement, and indeed the Landlord's argument may have had some merit. However, I find that claiming that a forwarding address was not provided in writing is contradictory to then making a deduction, without the authority of an Arbitrator or the Applicant's written consent, and returning the remainder to the very address that was provided to the Landlord. Therefore, I find that the Landlord failed to deal properly with the Tenant's deposits.

I also find that if the Landlord felt so strongly about the requirement of the Tenant to provide a forwarding address in writing, he could have requested any of the family members of the Tenant to provide the address in writing so that he had confirmation of the address where an Application could be served requesting authority to make the deductions sought.

Based on the foregoing, I find that the Landlord has failed to deal with the Tenant's security deposit in accordance with the Act and therefore the Applicant, being the executor of the Tenant named on the Application, is entitled to the return of double the deposits paid in the amount of $2,200.00, pursuant to Section 38(6) of the Act.

As the Landlord has already returned $136.51 back to the Applicant, the outstanding balance of the deposits owing is **$2,063.49**.

I also find that a Tenant or the Applicant cannot be held responsible for utilities that were not used by them for a rental suite which was not in their possession and therefore, I award the Applicant the utilities claimed in the undisputed amount of **$179.43**.

As the Applicant has been successful in this hearing, I also award the Applicant the filing fee of **$50.00** pursuant to Section 72(1) of the Act. Therefore

Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **$2,292.92** in favor of the Applicant pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) 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: September 29, 2014

Residential Tenancy Branch