Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MNSD, FF

Introduction

This adjourned hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting return of double the $400.00 security deposit. The initial hearing was held on July 7, 2014 and reconvened on September 15, 2014.

Both parties were present at each hearing. At the start of the reconvened 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.

Preliminary Matters

At the hearing held on July 07, 2014 the landlord confirmed that her service address remained the same as that indicated on the tenant's application for dispute resolution. That application was given to the landlord prior to the landlord receiving evidence on June 27, 2014.

The landlord was allowed to make 1 rebuttal submission to the tenant's evidence; which she did. However, the landlord gave that evidence to the tenant's advocate on September 9, 2014, sent via email. As set out in my interim decision, the landlord was warned that any submission made at the last possible time could be rejected. The tenant said the delay was caused by her need to consult a lawyer; there was no evidence before me that this was the case.

As the landlord chose to serve her evidence by a method that is not contemplated by the legislation and, as the landlord chose to make that submission just 5 days prior to the adjourned hearing I determined that accepting the evidence would be contrary to the instructions given in my interim decision and it was set aside.

The landlord was at liberty to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to return of double the $400.00 security deposit paid?

Background and Evidence

There was no dispute that this tenancy commenced on June 30, 2013. The parties agreed that the respondent (*the landlord*) brought the tenancy to the tenant for her to sign. The tenancy agreement was signed by the owner of the home. The tenant was not provided with a copy of the tenancy agreement.

The tenant had use of a suite in the lower portion of the home that had its own bathroom and kitchen.

There was no dispute that the tenant paid her rent, by cheque, to the landlord; who then passed on the payments to the owner.

The tenant said that she was told, prior to moving in, that she would have to pay a security deposit in the sum of $400.00; which she did. The payment was made in cash, with a friend of the tenant's present. The tenant gave the landlord the deposit while in the rental unit; no receipt was issued.

The tenant vacated the unit on August 31, 2013.

The tenant submitted a copy of a text message sent to the landlord which included her forwarding address and a request the deposit be returned no later than October 15.

An email sent by the landlord to the tenant's advocate on February 27, 2014 indicated:

> *"We discussed the damage deposit would pay for damages, carpet cleaning and the outstanding utilities bills…."*

The tenant's advocate stated that this email provided adequate evidence that the respondent meets the definition of landlord as set out in the legislation. The email also referenced repairs that had been arranged and her contact with other, potential tenants. The landlord's email indicates that she and the tenant discussed the deposit which was meant to cover utility bills, cleaning the carpet, repairs to a couch and the dehumidifier.

The landlord said that she was not a landlord; that the tenant signed a lease with the owner. The landlord said that the unit is shared and that she was the tenant's roommate. The landlord stated she did not accept a security deposit from the tenant, but that she did accept all rent payments cheques, which were given to the landlord. Any repairs referenced in the email were those that the landlord and tenant completed together; that was the "we" the email was referencing. The landlord denied that she acted on behalf of the owner.

Analysis

I have considered the respondent's submission that she was not the landlord, but a roommate of the tenant.

> ***"landlord"**, in relation to a rental unit, includes any of the following:*
>
> *(a) the owner of the rental unit, **the owner's agent** or another person **who, on behalf of the landlord**,*
>
> *(i) permits occupation of the rental unit under a tenancy agreement, or*
>
> *(ii) **exercises powers and performs duties under this Act, the tenancy agreement or a service agreement**;*
>
> *(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
>
> *(c) a person, other than a tenant occupying the rental unit, who*
>
> *(i) is entitled to possession of the rental unit, and*
>
> *(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
>
> *(d) a former landlord, when the context requires this*
>
> (Emphasis added)

From the evidence before me I find that the respondent was an agent who exercised and performed the duties of a landlord, on behalf of the rental unit owner. I find that the respondent attempted to evade her responsibilities as such; by denying that she had accepted a security deposit when in fact the evidence clearly indicated that she had taken a security deposit from the tenant. I based this finding on the email evidence where the landlord clearly indicated she was holding a deposit that she wished to arbitrarily apply to costs that were not proven. The landlord had the tenant sign the tenancy agreement, dealt with repairs and generally acted for the owner.

The landlord is warned that the legislation cannot be avoided and that when acting as an agent the legislation applies. Further, any payment made by cash must be accompanied by a receipt issued to the tenant.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord confirmed receipt of the tenant's application for dispute resolution which included a service address. I find that the landlord had that address no later than June 27, 2014; when the landlord received the tenant's evidence she had already received the application for dispute resolution; this was not in dispute. The landlord did not return the security deposit and did not submit a claim against the deposit. Instead, the landlord has denied her responsibilities as agent and attempted to retain a security deposit, in breach of the legislation.

Therefore; I find that the tenant is entitled to return of double the $400.00 security deposit paid to the landlord's agent.

Based on these determinations I grant the tenant a monetary Order in the sum of $800.00**.** In the event that the landlord does not 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.

Conclusion

The respondent is an agent of the landlord.

The tenant is entitled to return of double the $400.00 security deposit.

This decision should be read in conjunction with my July 7, 2014 interim decision.

This final decision is final and binding 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: September 15, 2014

Residential Tenancy Branch