Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 890 DEVONSHIRE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for damage or loss under the Act, and for the return of the security deposit and pet damage deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter – October 2, 2014

At the outset of the hearing the landlord's agent requested an adjournment as they had had just received the tenant's evidence. The agent stated the evidence was served on his lawyer when their lawyer was out of town and that they have not had sufficient time to review the evidence and make a submission.

The landlord's agent stated that there was also a written agreement between the parties and the tenant was given the amount of $500.00 to vacate the premises. The agent stated the agreement was a full and final settlement and no further claims were to be brought against the landlord.

The advocate for the tenant objected to the adjournment. The advocate stated the evidence was filed in accordance with the Residential Tenancy Branch Rules of Procedures (the "Rules").

The tenant denied that the agreement contained a clause that it was a full and final settlement.

In this case, the tenant's evidence was filed at the last time available under the Rules. The tenant's evidence was not filed with their application as required by rule 2.5 as copies of all

documentary evidence to be relied on at the hearing are required to be submitted with their application.

I have reviewed the tenant's evidence and all evidence was available to file with their application. I note the tenant's application was filed on June 4, 2014 and their evidence submitted on September 15, 2014, which I find is an unreasonable delay.

Further, the principles of natural justice require that a person be informed and given particulars of the claim against them. As a result, I found an adjournment appropriate in the case.

The landlord was given until October 10, 2014, to file their evidence with the Residential Tenancy Branch and provide a copy to the tenant.

Therefore, I adjourned this matter to my next available date.

Preliminary issue – November 25, 2014

At the outset of the hearing the advocate stated that they received the landlord's evidence; however, it appears by the list of exhibits provided by the landlord that a document is missing. The advocate stated this was an oversight and seeks an adjournment to receive a copy of the missing document.

As the document is relevant, I find an adjournment is appropriate. The landlord's agent was directed to provide a copy of the missing document to the tenant forthwith.

Therefore, I adjourned this matter to my next available date.

Preliminary matter - January 7, 2015

At the outset of the hearing the parties agreed all evidence has been received and they were ready to proceed.

In this case on January 21, 2014, the parties entered into a written agreement. A written, signed agreement was submitted into evidence which showed the tenant received the amount of $500.00 to vacate the rental premise. The agreement further indicated that the tenant will have no further claims against the landlord. Filed in evidence is a copy of the agreement signed by both parties.

The tenant filed an affidavit sworn on November 12, 2014. The tenant submits that AW, who was a person working for the landlord, made him sign the agreement under duress as he was told by AW in the bank parking lot, that if he did not sign the agreement he would not receive the $500.00 and his belongings would be left in the parking lot. Filed in evidence is a copy of the affidavit.

The landlord's agent stated that the tenant is just making up a story.

The landlord's agent filed in evidence a letter from AW dated October 5, 2014. In the letter AW submits that he helped the tenant move his belongings into his new place and then had him sign a release, where the tenant formally acknowledged that the $500.00 was a full and final settlement.

AW submits that after the agreement was signed the tenant asked him if he was hiring. AW submits he offered the tenant a job and the tenant worked for him for approximately three months. AW submits that he would not have given the tenant a job if he felt the tenant was still suing his company for damages.

In this case, on October 2, 2014, the tenant denied that he signed a full and final settlement agreement. I find the testimony of the tenant conflicts with the documentary evidence as the document clearly indicates no further claims are to be made against the landlord.

Further, if the document was signed under duress and the tenant was forced to sign the agreement as suggested, it would have been reasonable for the tenant to disclose this information when they filed their original written submission as the tenant would have known of the agreement that prohibited him from bringing any further claims against the landlord.

I also note page 15 of the 71 pages of evidence filed by the tenant, is a document titled "Dairy of (BM)" [Reproduced as written], and the only note for January 2014, was that he went to see a law student to fight the assault charges he was facing against the landlord MK. I find if the tenant version was believable that he was forced to sign the agreement on January 21, 2014, under duress, it would have been reasonable for the tenant to make notes on this significant event in his diary.

However, it was not until the landlord filed in evidence the agreement and the letter of AW on October 7, 2014, that approximately five weeks later on November 12, 2014, that the tenant alleging duress in a sworn affidavit. I find this was an unreasonable delay and was more likely than not to fabricate a story as suggested in order for the tenant's claim for compensation for damages or loss to proceed.

Further, the tenant worked for the person who he alleged forced him to sign the agreement for approximately three months; I find it highly unlikely that if the tenant was forced to sign an agreement, then would ask the perpetrator for a job and continue to work for him for approximately three months, if he suffered duress.

Based on the above, I find the tenant has failed to prove on the balance of probabilities that the agreement was signed under duress. As a result, I find the agreement is binding on the parties.

Therefore, I decline to hear the tenant's request for a monetary order for compensation for damage or loss.

However, I do accept the agreement does not speak to the issue of the security deposit or pet damage deposit (the "deposits"). The deposits are paid by the tenant and held in trust by the landlord for the tenant and are required to be dealt with pursuant to section 38 of the Act, at the end of the tenancy or when the landlord received the tenant's forwarding address, whichever is later. Therefore, I will hear the issue of the return of their deposits.

Issue to be Decided

Is the tenant entitled to the return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenancy began on January, 1, 2013. Rent in the amount of $750.00 was payable on the first of each month.

The advocate stated that tenant paid the landlord a security deposit and pet damage deposit totaling the amount of $750.00. The advocate stated due to the tenants personal circumstances he was allowed to pay the deposits in multiple installments.

The advocate stated on April 1, 2014, the tenant sent a letter to the landlord which requested the return of his security deposit and pet damage deposit. The advocate stated the landlord did not respond to the tenant's letter.

The tenant testified that he paid the landlord WE the amount of $200.00 prior to moving into the rental unit and this amount was a deposit towards the security deposit. The tenant stated in February he paid the amount of $500.00 as another payment towards the deposit. The tenant stated the landlord provided receipts for these two deposits. However, when he paid the balance of $50.00 a receipt was not issued. Filed in evidence are two receipts.

The landlord's agent testified that he believes the receipts the tenant has submitted are falsified and he has been unable to locate the writer of the receipts in order to prove it.

The landlord's agent testified that a large amount of tenants did not pay a security deposit or pet damage deposit because the building was going to be fully renovated and they did not bother to complete the move-in condition inspection as required.

The landlord's agent testified that even if we accept the receipts that the tenant has submitted there is no evidence this was a deposit towards any security deposit or pet damage deposit as the receipts simply say a deposit and it is more likely a deposit towards rent. The agent stated there is no evidence submitted by the tenant that he paid any rent for the months of January 2013 or February 2013 and it would have been easy for the tenant to prove by submitting his bank records to show the tenant had the rent money and the money for the deposits.

The landlord's agent testified that he also believes that the receipt issued on February 8, 2013, has been altered as a word has been scratched out and replaced with deposit. The agent stated he believed the scratched out word was rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 38 of the Act, the landlord must return to the tenant their security deposit and pet damage within 15 days of the tenancy ending or 15 day of receiving the tenant's forwarding address, which is the later.

The tenant provided to the landlord his forwarding address in writing in a letter dated April 1, 2014.

In this case both parties have provided a different version of events as to whether or not a security deposit or pet damage deposit was paid.

The tenant has submitted two receipts in support of his claim.

The first receipt was issued on December 11, 2012, in the amount of $200.00. This was prior to the tenancy commencing and prior to rent being due on January 1, 2013. While it is possible this was an advance payment of rent, however, I find it more likely to be a security deposit.

The second receipt was issued on February 8, 2013, in the amount of $500.00. This receipt has been altered as a word has been scratched out and replaced with the word "deposit". At first glance it appeared it may have been a different room number, however, upon my further review of the receipt is could just as easily be the word rent.

I also have concerns about the handwriting on the receipt, while I am not a handwriting expert, the word "deposit" is not written in the same manner as on the receipt issued on December 11, 2012. The handwriting is more similar to the handwriting of the tenant as the D, E and S are remarkably similar to those written in the tenant's application. There is no similarity in the word "deposit" when compared with the receipt issued on December 11, 2012.

As a result, I am not satisfied that this receipt was a deposit towards a security or pet damage deposit as it is just as likely deposit for rent. There was no evidence to support that the tenant paid rent for the month of February, 2013, such as providing banks record to show that tenant had the money to pay both of these amounts. Further there was no evidence that a later payment of $50.00 was made and the onus in on the tenant to prove their claim on the balance of probabilities.

While industry standards normally requires a tenant to pay up to half the month rent for a security deposit, and half a month rent for a pet damage deposit, that is not a requirement under the Act.

As a result, I find the only amount proven by the tenant was the payment made prior to tenancy commencing on December 11, 2012, in the amount of $200.00, as rent was not due when the payment was made.

Therefore, I find the landlord was required to return the above amount to the tenant within 15 days of the tenancy ending or receiving the tenant's forwarding address. I find the landlord breached the Act and the tenant is entitled to recover double this amount pursuant to section 38(6) of the Act.

I grant the tenant a monetary order in the amount of **$400.00**.

Conclusion

The tenant's application for a monetary order for loss or damage was dismissed. The tenant was granted a monetary order for the return of the security deposit.

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: January 19, 2015

Residential Tenancy Branch