Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matters

At the onset of the hearing the Tenant stated that the Landlord was served with her evidence and that no evidence package was received from the Landlord. The Landlord states that the only document received from the Tenant was the application for dispute resolution and that the Landlord's evidence was mailed to the Tenant on January 16, 2014. Neither party asked for an adjournment to obtain this evidence. Both Parties were given an opportunity to give oral evidence on the contents of their respective packages during the hearing and as relevant to the issues. The Landlord acknowledged that they were aware of the details of the Tenant's claim and supporting evidence.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started in October 2005 and ended on July 31, 2012. No move-in inspection was conducted. The Landlord collected $700.00 at the outset of the tenancy. The Landlord received the Tenant's forwarding address on August 20, 2012 and on August 30, 2012 the Landlord returned $596.86 from the security deposit. The Landlord did not make an application for dispute resolution to claim against the security deposit and the Tenant did not sign an agreement for deductions to be made from the security deposit.

The Landlord states that the previous landlord deducted $50.00 from the security deposit in October 2011 prior to the unit being purchased by the Landlord. The Landlord provided an email from the previous landlord dated July 30, 2012 in which the previous landlord confirms this deduction and that the Tenant was informed of this deduction. The Landlord has no written agreement from the Tenant for this deduction and the Tenant states that she was not aware of any deduction being made on the security deposit by the previous landlord.

The Tenant states that the previous landlord lived in the neighbouring unit and that for the past six and one half years the Tenant carried out an agreement with this landlord to mow the lawn for both units during the spring summer and fall months. The Tenant states that this agreement was for the duration of the tenancy and that the previous landlord did not tell her that this agreement was to cease when the unit was sold to the new Landlord. The Tenant states that the previous landlord told her the transfer of the tenancy would be a smooth transition. The Tenant states that the lawn was mowed as agreed for March, April, May and June 2012. The Tenant states that following the dispute with the new Landlord the lawn was not mowed for July 2012. The Tenant claims $400.00.

The Landlord states that there was no agreement for mowing the lawn but that if there was the Landlord was not informed of this agreement and that the agreement was

cancelled by the previous landlord when the unit was sold. The Landlord states that the first they heard of this agreement was when the Tenant sent them invoices in April for the work for March, April and May 2012. The Landlord states that the Tenant was asked to provide further details but did not so and the Landlord refused to pay the invoices. The Landlord questions whether any lawns would require mowing in March and April 2014 due to the rain during this period.

The Tenant states that she did not deal with the Landlord who appeared at this hearing as most of her dealings were with the other named Landlord and that she spoke with this other Landlord about the details of her claims.

Analysis

Section 38 of the Act provides 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 security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. This section further provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Based on undisputed evidence I find that the Tenant paid $700.00 as a security deposit at the outset of the tenancy. As the Landlord had no agreement in writing from the Tenant to make a deduction, including the earlier $50.00 deduction, did not return the full amount of the security deposit to the Tenant and did not make an application to retain any amount of the security deposit after the tenancy ended, I find that the Landlord must pay the Tenant double the security deposit of $700.00 plus 24.79 in interest for a total entitlement to the Tenant of **$1,424.79**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The Tenant's oral evidence that she has an agreement for lawn

care for the duration of the tenancy and that she carried out this agreement, with the exception of the last month of the tenancy, is very believable. While the Tenant has no supporting evidence of this agreement, I do not find that Landlord's denial of the existence of such an agreement to detract from this believability. This is particularly so since the Landlord did confirm with the previous landlord other claims from the Tenant and had opportunity to confirm or deny this claim with the previous landlord but produced no evidence of communication with the previous landlord on this claim. While it may be that rain can generally be expected to be present during the spring months, I also consider that lawns are generally in great need of cutting at precisely this time in the season. For these reasons I find that the Tenant has substantiated on a balance of probabilities that an agreement to cut the lawn existed for the duration of the tenancy, that this agreement therefore formed a part of the tenancy agreement, that the Tenant carried out that agreement for March, April, May and June 2014 and that the Tenant is entitled to compensation of **$400.00** pursuant to this agreement. The Tenant is also entitled to recovery of the **$50.00** filing fee for a total entitlement of **$1,874.79**
Deducting the **$596.86** already received by the Tenant leaves **$1,277.93** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **$1,277.93**. If necessary, this order may be filed in the Small Claims Court 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: January 30, 2015

Residential Tenancy Branch