



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORMAN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of her security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The individual landlord, JA ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the caretaker for the landlord company named in this application, NEL ("landlord company"), and that he had authority to represent the landlord company as an agent at this hearing (collectively "landlords").

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package ("Application") on January 16, 2015, by way of registered mail and by leaving a copy at his door. The tenant provided the Canada Post receipt and tracking number as proof of service, with her Application. The tenant indicated that the package was returned to her. The landlord stated that he did not receive the tenant's Application but was only advised of a hearing when he attended at the Residential Tenancy Branch ("RTB") to file an application for an unrelated matter. The landlord stated that he did not receive a notice, evidence or any other details about the tenant's Application from the RTB, aside from the date, time and call-in particulars of this hearing. The landlord stated that the tenant provided the incorrect mailing address for the landlord, while the tenant indicated that she had to research the mailing address for the individual landlord. However, at the outset of the hearing, the landlord testified that he was willing to proceed with the hearing and settle this matter, despite the issues regarding service of the tenant's Application. Accordingly, I find that the landlords were

sufficiently served with the tenant's Application for the purposes of section 71(2)(c) of the *Act*.

The landlord testified that he did not serve the tenant with the landlords' written evidence package, only the RTB, as he was not provided with a forwarding address from the tenant or the tenant's Application for this hearing. As this matter settled between the parties, I do not making any findings with respect to service of the landlords' written evidence package.

Preliminary Issues – Amendments to Tenant's Application

During the hearing, the tenant requested an amendment to her Application, in order to correct her own last name in the Application. The landlord consented to the tenant's requested amendment. As per section 64(3)(c) of the *Act*, I amend the tenant's application to correct the tenant's last name in the style of cause for this Application, which is now correctly reflected on the front page of this decision.

During the hearing, the tenant requested an amendment to her Application, in order to add the landlord company as a respondent-landlord to this Application. The tenant stated that she was told that the individual landlord named in this Application was the manager for the rental unit property and to deal with him for the tenant's security deposit. The tenant indicated that she did not have a copy of the tenancy agreement or the move-in condition inspection report so she was unaware of the landlord company's name in order to properly name the landlord in her Application. Initially, the landlord opposed the tenant's requested amendment, indicating that the tenant should have known the proper landlord company to name in her Application, given that he provided copies of the tenancy agreement and the move-in condition inspection report to the tenant with this information. At the conclusion of the hearing, the landlord agreed to the tenant's request to amend her Application to add the landlord company as a respondent-landlord to this Application. The landlord stated that he had authority to settle this matter on behalf of the landlord company as their agent and that he understood and agreed that the terms of this settlement were legal, final binding and enforceable against both himself and the landlord company. As per section 64(3)(c) of the *Act*, I amend the tenant's application to add the landlord company as a respondent-landlord in this Application, which is now reflected in the style of cause on the front page of this decision.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord testified that this tenancy began on May 23, 2014, for a fixed term to end on May 30, 2015. Monthly rent in the amount of \$700.00 was payable on the first day of each month. The landlord agreed that the tenant paid a security deposit of \$350.00, despite the fact that there was no reference to this deposit in the tenancy agreement. The landlord confirmed that the landlords continue to retain the tenant's security deposit of \$350.00. A written tenancy agreement exists for this tenancy and the tenant stated that she signed the agreement.

The tenant stated that she provided written notice sometime in September 2014 to vacate the rental unit at the end of October 2014, by leaving the notice in the mail slot of the laundry room where she left her rent payments during the tenancy. The landlord testified that he did not receive any written notice from the tenant of her intention to vacate the rental unit. The tenant indicated that she vacated the week before October 31, 2014, but that she did not explicitly advise the landlord that she had vacated, as it was evident she left because of all the moving trucks at the building. The landlord indicated that the tenant abandoned the rental unit, as he was not advised that she had vacated.

Both parties agreed that a move-in condition inspection and report were completed on May 23, 2014 and that the tenant signed a copy of the report. Both parties agreed that no move-out condition inspection or report were completed. The tenant stated that in December 2014, her friend, AF, hand delivered a copy of the tenant's written forwarding address to the other caretaker of the property, T, who also accepted rent payments during the tenancy. The landlord acknowledged that T was another caretaker for the landlord company and that he accepted rent payments during this tenancy. The tenant also stated that she delivered a copy of her written forwarding address to the mail slot in the laundry room of the rental building sometime in February or March 2015. The landlord stated that neither T nor the landlords received the tenant's forwarding address in writing.

The landlord testified there were damage and cleaning costs at the end of this tenancy. The landlord stated that the tenant breached the fixed term tenancy agreement by leaving the rental unit early when the tenancy was to end on May 30, 2015. The tenant

stated that she was under the impression that the tenancy was a month to month agreement, despite signing the fixed term tenancy agreement. The landlord confirmed that he did not make any applications for dispute resolution against this tenant because he did not have her forwarding address.

The tenant seeks the return of double the amount of her security deposit of \$350.00, totalling \$700.00. The tenant stated that the landlords did not return her security deposit in full or make an application within 15 days of the end of this tenancy and providing a forwarding address in writing. The tenant also seeks to recover the \$50.00 filing fee for her Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlords will retain the tenant's entire security deposit of \$350.00;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's entire Application at this hearing and any issues arising out of this tenancy;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlords' potential monetary and other claims against the tenant arising out of this tenancy;
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy. The landlord testified that he would advise the landlord company about this settlement and

that he understood that the settlement was legal, final, binding and enforceable against the landlord company as well as himself personally.

Conclusion

To give effect to the settlement reached between the parties, I order the landlords to retain the tenant's entire security deposit of \$350.00.

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: April 27, 2015

Residential Tenancy Branch

