Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM-ALLIANCE REAL ESTATE GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of double the value of their security and pet damage deposits, pursuant to section 38;
- authorization to recover their filing fee for this application from the landlords, pursuant to section 72.

The landlords' agent TJ ("landlord") and the two tenants, tenant JB ("tenant") and "tenant MM," attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the director of real estate services for the landlord company named in this application and that he had authority to represent both the landlord company and the individual "landlord CR," also named in this application, as an agent at this hearing.

The tenant testified that the landlords were served with the tenants' Application for Dispute Resolution hearing package ("Application") on January 12, 2015, by way of registered mail. The landlord confirmed receipt of the tenants' Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application.

The tenants confirmed receipt of the landlords' written evidence package by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' written evidence package.

During the hearing, the landlord consented to the tenants' request to amend their Application to correct the legal name of the landlord company. Given the landlord's consent, I amend the tenants' Application in accordance with section 64(3)(c) of the *Act*. The legal name of the landlord company is now correctly reflected on the cover page of this decision.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet damage deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Both parties agreed that this tenancy began on January 1, 2014 for a fixed term to end on December 30, 2014, after which the tenants were required to vacate the rental unit. Monthly rent in the amount of $1,750.00 was payable on the first day of each month. A written tenancy agreement was provided by the landlords.

Both parties agreed that the tenants vacated the rental unit on June 15, 2014. Both parties agreed that the tenants were permitted by the landlords to sublet their rental unit to other tenants, after June 15, 2014 until the end of the fixed term lease on December 30, 2014. Both parties agreed that the tenants found other tenants to sublet the rental unit ("sublease tenants") until December 30, 2014. Both parties agreed that the tenants did not pay any liquidated damages or loss of rent to the landlords because they were able to sublet the rental unit until the end of the fixed term on December 30, 2014. The landlord confirmed that the tenants did not breach the fixed term of their tenancy agreement.

The landlord indicated that the sublease tenants moved into the rental unit around June 16 or 17, 2015. Both parties agreed that the tenants provided the landlords with rent cheques and that rent was paid in full by the tenants to the landlords from June 16, 2014 until December 30, 2014. The tenant stated that the sublease tenants personally provided her with rent cheques of $1,750.00 each month until December 30, 2014, to reimburse the rent being paid by the tenants to the landlords. The landlord stated that no new tenancy agreement was signed by the sublease tenants for the period from June to December 2014. The landlord stated that the tenants were still bound by the original tenancy agreement, as their names were still on the lease and they still had responsibilities and obligations under the lease. The landlord indicated that a new month to month tenancy agreement was signed by the sublease tenants as of January 1, 2015 for a two month period, as the sublease tenants wanted to stay longer than the fixed term period ending December 30, 2014.

Both parties agreed that a move-in condition inspection and report were completed on January 6, 2014 and that a move-out condition inspection and report were completed on December 18, 2014. Tenant MM indicated that the landlords requested the move-out inspection date on December 18, 2014, while the landlord stated that the inspection may have been completed early to avoid the busy holiday period in December 2014. Both parties agreed that they participated in both inspections and signed both reports. The tenants provided a copy of both reports with their Application. The tenant indicated that she provided a written forwarding address to the landlords by way of email in July 2014 and again on December 17, 2014. Both

parties agreed that the tenants provided the landlords with their forwarding address in writing on December 18, 2014, by way of the move-out condition inspection report.

Both parties agreed that a security deposit of $875.00 and a pet damage deposit of $875.00 were paid by the tenants on December 9, 2013. The landlord testified that he does not dispute that the tenants were entitled to the full return of both their security and pet damage deposits, totalling $1,750.00. The landlord stated that the landlords returned both deposits in the form of a cheque on December 29, 2014, by way of regular mail, but that the mail was returned to the landlords for an unknown reason. The landlord stated that there may have been an error in the transcription of the tenants' forwarding address but he was unsure. The tenant indicated that landlord CR referred to a "return stamped envelope on file" in an email, dated January 5, 2015, the email of which was provided with the landlords' written evidence package. The returned envelope was not provided by the landlords for this hearing. The landlord stated that the landlords were alerted to the issue regarding the non-receipt of the previously mailed cheque, by the tenant by way of email on January 5, 2015. The tenant stated that the landlord knew about the returned mail and did not do anything to resend the cheque to the tenants until January 5, 2015, when the tenant emailed the landlords. Both parties agreed that the tenants received their security and pet damage deposits, totalling $1,750.00, on January 5, 2015, by way of courier mail from the landlords.

The tenants seek the return of double the value of their security and pet damage deposits, the balance of which equals $1,750.00, from the landlords. The tenants claim that this tenancy ended on December 18, 2014, when the move-out inspection occurred. The tenants indicated that when the landlords returned their deposit on January 5, 2015, this was beyond the 15 day period allowed by section 38 of the *Act*. The tenants provided two emails between landlord CR and the tenant, both dated December 17, 2014, indicating that as of December 18, 2014, once the move-out inspection was completed, the tenants' existing lease would be "dissolved" and that this was the "vacate date." The tenant stated that because landlord CR confirmed that the lease was being "dissolved" on December 18, 2014, that the tenancy ended on this date. Initially, upon questioning, tenant MM testified that the tenancy ended on December 30, 2014. However, tenant MM later testified that he meant to disagree with this date and that the tenancy actually ended on December 18, 2014.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, agreements, emails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Section 38 of the *Act* requires the landlords to either return all of the tenants' security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, 15 days after the later of the end of a tenancy and a tenants' provision of a forwarding address in writing.

If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security and pet damage deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security and pet damage deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenants provided their written forwarding address to the landlords on December 18, 2014, by way of the move-out condition inspection report. The tenants did not provide a written forwarding address prior to this date, as email is not an acceptable method of a written forwarding address, as it is not in accordance with section 88 of the *Act*.

On a balance of probabilities and based on the evidence before me, I find that this tenancy ended on December 30, 2014. The actions of both parties, rather than the verbal conduct, indicates that both parties were aware that the tenancy was ending on December 30, 2014, as per the fixed term tenancy agreement. The tenants were bound by their original tenancy agreement, which was for a fixed term ending on December 30, 2014. The tenants paid rent and the landlords accepted this rent, up to and including December 30, 2014. The tenants did not request a refund of the rent paid from December 19 to 30, when they say they were not occupying the rental unit or bound by the tenancy agreement because the sublease tenants took over. The landlords did not accept rent from the sublease tenants until after December 30, 2014, as the sublease tenants continued to pay the tenants for rent directly until December 30. The tenants' names were not removed from the tenancy agreement at any time prior to the end of the fixed term. The sublease tenants' names were not added to the tenancy agreement at any time prior to the end of the fixed term. The fixed term end date was not changed at any time to December 18 or another earlier date before December 30, 2014. I accept the landlords' evidence that the sublease tenants signed a new tenancy agreement with only their names and not the tenants' names, after the fixed term ended on December 30, 2014.

Although the move-out condition inspection occurred on December 18, 2014, prior to the end of this tenancy on December 30, 2014, I accept the landlords' evidence that this is an earlier date that was likely chosen by the landlords in order to avoid the busy holiday period. Although the tenant provided emails from landlord CR indicating that the lease was "dissolved" as of December 18, 2014, I find that the conduct of both parties, rather than the words, determined the end of this tenancy. Landlord CR did not testify at this hearing. Most importantly, the tenants did not pay any liquidated damages or loss of rent to the landlords because they were able to sublet the rental unit until the end of the fixed term. If the tenancy ended on December 18, 2014, as per the tenants' evidence, presumably both parties would be discussing a loss of rent from December 19 to 30 as well as a portion of liquidated damages, to be paid by the tenants to the landlords. Further, the sublease tenants presumably would have signed a new tenancy agreement as of December 19, 2014 and they did not. However, the sublease tenants continued to stay in the rental unit until December 30. The entire purpose of having sublease tenants was for the tenants to avoid paying liquidated damages and a loss of rent to the

landlords, as per both parties' written and verbal evidence. Accordingly, I find that the tenants fulfilled the rights, responsibilities and obligations under the tenancy agreement until December 30, 2014, which is the date the tenancy ended.

The landlords had 15 days from the later of the end of the tenancy or a written forwarding address provision, to return the tenants' security and pet damage deposits. I find that the landlords had until January 14, 2015, which is 15 days from the end of the tenancy on December 30, 2014, to return the deposits. Both parties agreed that the landlords returned both deposits, totalling $1750.00, on January 5, 2015. Therefore, I find that the tenants are not entitled to the return of double the value of their deposits. Accordingly, the tenants' application for the return of double the value of their security and pet damage deposits, is dismissed without leave to reapply.

As the tenants were unsuccessful in their Application, they are not entitled to recover the $50.00 filing fee from the landlords.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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: May 08, 2015

Residential Tenancy Branch