



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

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

- authorization to obtain a return of the security deposit, pursuant to section 38.

The tenant's agent, CS ("tenant's agent"), who is the tenant named in this Application, and the landlord 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. This hearing lasted approximately 94 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The tenant's agent confirmed receipt of the landlord's written evidence package for this hearing, indicating that it was received by way of courier mail on the day before this hearing. The tenant's agent confirmed that she reviewed the landlord's written evidence package and that she agreed to proceed with the hearing on the basis of me considering this evidence in my decision. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package. Although the evidence was not served at least 7 days prior to this hearing in accordance with Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, given the tenant's agent's consent, I proceeded with the hearing and I have considered the landlord's written evidence package in my decision.

At the time of this hearing, I had not yet received the landlord's written evidence package. However, I received a copy of the landlord's written evidence package after the hearing and I reviewed it prior to writing this decision.

Preliminary Issues – Tenant's Standing to make Application and Adjournment Request

The landlord disputes that the tenant's agent, named in this Application, has any standing to make an application with respect to this tenancy. The landlord indicated that the tenant's agent

is not a proper tenant on the tenancy agreement, that she did not occupy the rental unit and she was not involved in all aspects of this tenancy including the move-in condition inspection.

The tenant's agent testified that she has a power of attorney for her mother, who is the tenant ("tenant") named on the tenancy agreement. She indicated that her mother is 75 years old, so she has been acting on her behalf for this tenancy. The tenant's agent testified that she contacted the landlord to inquire about this rental unit, prior to her mother signing the tenancy agreement. She stated that she was present when her mother and the landlord signed the tenancy agreement. The tenant's agent indicated that she signed the tenancy agreement as a tenant, even though she was not listed as a tenant on the first page of the tenancy agreement. Both parties provided copies of the tenancy agreement which confirm these facts. The tenant's agent clarified that she paid rent directly to the landlord, which the landlord confirmed. The tenant provided e-transfer payment documents indicating that rent was paid directly by the tenant's agent and accepted by the landlord for this rental unit. The tenant's agent explained that most of the telephone calls and text messages regarding this tenancy were exchanged between the tenant's agent and the landlord, not the tenant herself.

Based on the testimony and documentary evidence submitted by both parties, I find that the tenant named in this Application, is the tenant's agent. I find that the tenant's agent signed the tenancy agreement under the "tenant" party heading, she communicated directly with the landlord regarding tenancy matters and the landlord accepted rent directly from her. The tenant is permitted to have an agent file an Application, represent her interests at an RTB hearing and receive a monetary order on her behalf. The tenant's agent testified under oath that she had authority to speak on behalf of her mother at this hearing and that she has a power of attorney for her mother, as well. Accordingly, I find that the tenant named in this Application is an agent of the tenant and that she has standing to make an Application regarding this tenancy on behalf of her mother, the tenant.

The landlord also provided a one-page signed document, dated June 24, 2015, indicating that she wished to make an adjournment request in order to ensure that her late evidence would be accepted for this hearing as well as due to health issues. The document indicated and the landlord testified at the hearing, that she did not require an adjournment if the tenant agreed to proceed with the hearing on the basis of the landlord's late evidence being accepted for this hearing and considered in my decision. The landlord testified at the hearing that as the tenant's agent consented to her late evidence being accepted at this hearing and further to my decision to allow the late evidence at the hearing and in my decision, she was prepared to proceed with the hearing and she did not require an adjournment of the hearing.

Issue to be Decided

Is the tenant entitled to a monetary award for the return of the security deposit?

Background and Evidence

Both parties agreed that this tenancy began on April 1, 2014 and ended on August 15, 2014. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$550.00 was paid by the tenant on March 22, 2014 and that the landlord continues to retain this deposit in full. The landlord testified that the tenant provided a forwarding address in writing by way of a letter to the landlord, dated September 6, 2014, which was received by the landlord around September 18, 2014. Both parties agreed that a move-in condition inspection and report was completed on April 1, 2014 and both parties provided a copy of this report for this hearing.

The landlord stated that she provided the tenant with three opportunities to schedule a move-out condition inspection but that the tenant and her agent refused. The tenant's agent indicated that the landlord refused to meet with her because the landlord only wanted to meet with her mother. The tenant's agent stated that there was an agreement to meet the landlord at 11:00 a.m. on August 16, 2014 and that the landlord did not show up. The landlord stated that this time was not agreed to in advance and that she received the tenant's agent's text message about this meeting on the same date, August 16, 2014. Both parties agreed to meet at 4:00 p.m. on the same day but the landlord said that it was only to retrieve the keys from the tenant and that she would only perform a move-out condition inspection with the tenant's mother. The tenant explained that the agreement was for her to conduct a move-out condition inspection with the landlord and that her mother was not required to be present. The tenant stated that she was only permitted to return the rental unit keys to the landlord on August 16 and that the landlord refused to perform a move-out condition inspection with her.

The landlord confirmed that she offered two more opportunities for a move-out condition inspection to the tenant on August 25 and between August 25 and 30, 2014. She indicated that she made verbal offers by way of telephone and that she did not receive a response from the tenant or her agent. The tenant's agent stated that she questioned the tenant prior to this hearing and the tenant denied that the landlord telephoned her. The landlord confirmed that she did not issue an RTB form to provide notice of a final move-out condition inspection to the tenant. The landlord explained that she performed a move-out condition inspection with her own mother, after the tenant refused to attend.

The landlord confirmed that the tenant did not provide written permission to the landlord to retain any amount from her security deposit. The landlord confirmed that she has not yet filed an application for dispute resolution, although she completed one that was dated June 24, 2015, to retain the tenant's entire security deposit. The landlord confirmed that her application was not filed in time to join it as a cross-application to this hearing but that she was advised by the RTB staff to mention her application during the course of this hearing. The landlord provided a copy of her signed application, which has no RTB filing stamp or file number, with her written evidence package.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant seeks a return of her security deposit of \$550.00 from the landlord. I find that the tenant's right to apply for the return of her security deposit has not been extinguished under section 36(1)(a) of the Act, where the tenant has not participated in one of two opportunities for a move-out condition inspection offered by the landlord. I find that the landlord has not offered two opportunities for inspection in accordance with section 35(2) of the Act. Residential Tenancy Regulation ("Regulation") 17(2)(b) requires that the landlord provide a second opportunity for a move-out condition inspection by providing the tenant with a notice in the approved RTB form. The tenant's agent testified that she advised the landlord of this fact and provided a copy of the required RTB form to the landlord, prior to this hearing. However, the landlord confirmed that she did not provide any notice to the tenant in writing or using an approved RTB form, to offer a second opportunity for a move-out condition inspection. Therefore, as the tenant was not properly provided with a second opportunity to perform a move-out condition inspection, her right to apply for the return of her security deposit is not extinguished.

For the reasons indicated above, I find that the landlord's right to claim against the security deposit is extinguished by section 36(a) of the Act. This section states that the landlord cannot claim against the security deposit for damage to the rental unit if she has not provided two opportunities to the tenant to complete a move-out condition inspection.

The tenant provided her written forwarding address to the landlord, who acknowledged receipt around September 18, 2014. The tenancy ended on August 15, 2014. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of receiving a forwarding address from the tenant. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the Act, I find that the tenant is entitled to double the value of her security deposit, totalling \$1,100.00.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,100.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 30, 2015

Residential Tenancy Branch

