



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
MNSD, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit and pet damage deposit / and recovery of the filing fee; and
- ii) by the tenant for a monetary order reflecting the double return of the security deposit and pet damage deposit / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony. While there appears to be no dispute that the landlord was served with the tenant's application for dispute resolution and notice of hearing (the "hearing package"), the tenant claimed that the landlord's hearing package was not received. In this regard the landlord testified that the hearing package was served on the tenant by way of registered mail, and the landlord provided the Canada Post tracking number for the registered mail. The Canada Post website informs that on November 24, 2014, there was "Attempted delivery," and that a notice card was left indicating "where item can be picked up." Thereafter, the Canada Post website informs that on December 13, 2014, the item was "refused by recipient." The landlord testified that the hearing package was ultimately returned to the landlord. As a result of all the foregoing, I find that the landlord's hearing package was served in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**. I find that the tenant's refusal to take delivery of the hearing package does not nullify the aforementioned statutory provisions.

Further to all of the foregoing, the tenant made no request for adjournment, and relevant documents in the landlord's evidence which were not before the tenant appear to be

limited to a "statement of rental account," a summary of dates when on-line advertising for new renters was undertaken by the landlord, as well as 2 receipts for cleaning and repairs completed in the unit. I find in the circumstances of this dispute that the absence of these particular documents in evidence before the tenant does not prejudice the tenant, and that an adjournment is therefore not indicated.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from February 01, 2014 to January 31, 2015. Monthly rent of \$925.00 is due and payable in advance on the first day of each month. A security deposit of \$462.50 and a pet damage deposit of \$462.50 were collected. A move-in condition inspection report was completed with the participation of both parties.

By letter dated August 31, 2014 the tenant gave notice to end tenancy. In his letter he gave consent to the landlord to retain the security deposit and pet damage deposit "to cover the rent for September 2014." The unit was vacated on or about September 10, 2014, and a move-out condition inspection report was completed with the participation of both parties on September 11, 2014. The tenant's father as agent for the tenant signed the report and provided the tenant's forwarding address on the report. Further, by way of his signature on the report, on behalf of the tenant, the tenant's father tenant consented to the landlord's retention of the security deposit and pet damage deposit, in addition to agreeing that the tenant would be responsible for certain other costs including, but not limited to, cleaning and repairs.

The landlord testified that advertising for renters is ongoing for units in the building by way of Craigslist. Evidence submitted by the landlord supports a claim that advertising was active / renewed on August 17, 2014, active / renewed on September 16, 2014, and active / renewed again on October 17, 2014. New renters were found for the subject unit effective from November 01, 2014.

The tenant filed his application on October 23, 2014. In his application the tenant claims that while the move-out condition inspection report was completed on September 11, 2014, it was not until 36 days later on October 17, 2014 when he received a copy by mail. The landlord's application was filed on November 13, 2014.

Analysis

At the outset, the attention of the parties is drawn to the following statutory provisions:

ACT

Section 7: **Liability for not complying with this Act or a tenancy agreement**

Section 23: **Condition inspection: start of new tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Section 45: **Tenant's notice**

REGULATION

Section 18: **Condition inspection report**

Based on the documentary evidence, the affirmed testimony of the parties, and in consideration of the relevant statutory provisions, the various aspects of the respective applications and my findings are set out below.

LANDLORD

\$925.00: *unpaid rent for September 2014*

Despite the tenant's consent that the landlord may retain the security deposit and pet damage deposit as offsets to rent due for September 2014, in his application for dispute resolution the tenant seeks the double return of both deposits. Accordingly, the landlord's application includes a specific application for compensation for unpaid rent for September 2014.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find no evidence that the tenant had “a right under this Act to deduct all or a portion of the rent” for September 2014 when it was due and payable on September 01, 2014. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$25.00: *fee assessed for late payment of September’s rent*

I find that the addendum to the written tenancy agreement provides that a fee of \$25.00 will be assessed in the event that rent is not paid when due “before or on the FIRST day of each month.” As rent for September 2014 was not paid on or before September 01, 2014, I find that the landlord has established entitlement to the full amount claimed.

\$925.00: *loss of rental income for October 2014*

I find that the tenant ended the fixed term tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy.” I also find that the landlord attempted to mitigate the loss of rental income for October 2014 by way of ongoing on-line advertising for renters in the building. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$500.00: *liquidated damages*

I find that the addendum to the written tenancy agreement provides that liquidated damages of \$500.00 will be assessed against the tenant in the event that the unit is vacated before the end of the fixed term. In the circumstances of this dispute, I find that the tenant ended the tenancy and vacated the unit in September 2014, which is “earlier than the date specified in the tenancy agreement as the end of the tenancy” (January 31, 2015). Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$315.00: *repairs to damage in the unit*

Pursuant to the tenant’s consent provided by way of the signature of his agent / father on the move-out condition inspection report, in addition to a receipt submitted by the landlord for actual costs incurred, I find that the landlord has established entitlement to the full amount claimed.

\$100.00: *cleaning required in the unit*

Pursuant to the tenant’s consent provided by way of the signature of his agent / father on the move-out condition inspection report, in addition to a receipt submitted by the

landlord for actual costs incurred, I find that the landlord has established entitlement to the full amount claimed.

\$925.00: (\$462.50 + \$462.50) *retention of the security deposit and pet damage deposit*

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, in part:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the Regulation addresses **Condition inspection report**, in part:

18(1) The landlord must give the tenant a copy of the signed condition inspection report

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

- (i) the date the condition inspection is completed, and
- (ii) the date the landlord receives the tenant's forwarding address in writing.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, in part:

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection 4(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36(2) *[landlord failure to meet end of tenancy condition report requirements]*.

I find that while the tenant provided written consent for the landlord to retain his security deposit and pet damage deposit by way of letter dated August 31, 2014, and by way of his agent's / father's signature on the move-out condition inspection report dated September 11, 2014, I also find that the landlord failed to provide the tenant with a copy of the report within 15 days after the report was completed on September 11, 2014, as required by section 18 of the Regulation. Accordingly, I find that the landlord's right to retain either of the deposits is extinguished pursuant to section 38(5) of the Act. This aspect of the landlord's application must therefore be dismissed.

\$50.00: *filing fee*

As the landlord has achieved some measure of success with the main aspect(s) of the application, I find that the landlord has also established entitlement to recovery of the full filing fee.

SUB-TOTAL ENTITLEMENT: \$2,840.00

(\$925.00 + \$25.00 + \$925.00 + \$500.00 + \$315.00 + \$100.00 + \$50.00).

TENANT

\$1,850.00: *[(2 x \$462.50) + (2 x \$462.50)] the double return of the security deposit and pet damage deposit*

As noted above, section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, section 38 of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Further to the above statutory provisions, and as already noted above, section 38(4) of the Act also provides that the landlord may retain an amount from either or both deposits if "the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." In the circumstances of this dispute and again, as earlier noted, the tenant gave consent for the landlord to retain both deposits by way of his letter dated August 31, 2014, and by way of his agent's / father's signature on the move-out condition inspection report dated September 11, 2014. Accordingly, I find that as the landlord was given no reason to expect that there was or would later be a dispute around the disposition of the deposits, the landlord did not undertake to file an application to retain all or a portion of either or both deposits within 15 days after September 11, 2014. It was only after being served with the tenant's application for dispute resolution in late October 2014 when the landlord became aware of the dispute around the disposition of the deposits. As I have found that the landlord's right to retain all or a portion of either deposit has been extinguished by the landlord's failure to provide the tenant with a copy of the move-out condition inspection report within 15 days after its completion on September 11, 2014, I find the tenant has established entitlement to the full return of both deposits in the total amount of **\$925.00** (\$462.50 + \$462.50). However, I am unable to find that the tenant has established entitlement to the double return of either deposit pursuant to section 38 of the Act.

\$50.00: *filing fee*

As the tenant has achieved some measure of success with the main aspect of his application, I find that he has also established entitlement to recovery of the filing fee.

SUB-TOTAL ENTITLEMENT: \$975.00 (\$462.50 + \$462.50 + \$50.00)

Offsetting the respective entitlements, I find that the landlord has established a net entitlement to **\$1,865.00** (\$2,840.00 - \$975.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,865.00**. Should it be necessary, this order may be served on the tenant, 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: June 08, 2015

Residential Tenancy Branch

