Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested return of double a $297.50 security deposit and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The landlord did not make a written submission. The landlord confirmed receipt of the tenant's five pages of evidence.

Preliminary Matters

The landlord confirmed receipt of the tenant's hearing documents, sent via registered mail and delivered on October 28, 2014. The tenants submitted a copy of the registered mail tracking information which confirms receipt of the mail on October 28, 2014, with a signature of the landlord.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit paid?

Background and Evidence

There was no dispute that this tenancy commenced in October 2009 and that a security deposit in the sum of $297.50 was paid. The end date of the tenancy was in dispute.

The landlord confirmed that he did not create any written record of the tenancy; there was no move-in condition inspection report or signed tenancy agreement.

The tenants testified that they vacated the unit at the end of October 2012. The landlord said the tenancy ended in July 2012, when the tenants moved to another building owned by the landlord, in order to commence employment with the landlord. The landlord confirmed he had no independent evidence the tenancy ended in July 2012 and that he did not issue rent receipts or sign any employment documents that might confirm dates.

Counsel for the tenants read from a letter dated November 22, 2013, signed by the landlord's agent. The agent confirms in the letter that employment with the landlord commenced in November 2012. Counsel submitted that this letter supported the tenant's contention that they vacated the rental unit to move into another building, in order to commence employment with the landlord.

The landlord objected to counsel reading from the letter as he had not been served a copy of the letter. I explained that both parties were at liberty to make any oral submissions and that reading from a document was not prejudicial to a party. The landlord was at liberty to respond to the letter read by counsel; which he did. The landlord did not deny that he had written the letter.

The tenants confirmed that between October 31, 2012, when the tenancy ended and October 31, 2013 they did not provide the landlord with a written forwarding address.

The landlord said that he transferred the security deposit to the new tenancy when the employment commenced.

The landlord confirmed receipt of the tenant's address, as part of the application for dispute resolution I have found was received on October 28, 2014. The landlord confirmed that the security deposit has not been returned as the address was not given on time.

As the deposit had been transferred to a second tenancy the parties were asked if they wished to agree to an amendment of the tenant's application in order to resolve the issue of the deposit paid on the subsequent tenancy. The landlord declined.

Counsel referenced a decision issued by a different arbitrator in which the arbitrator found a tenant was entitled to return of the single sum of the security deposit, despite not having provided the written forwarding address. Counsel acknowledged that I was not bound by previous decisions.

Analysis

From the evidence before me I find on the balance of probabilities, that the tenancy in question commenced in October 2009 and ended effective October 31, 2012.

I have based this decision on the record referenced in which the landlord's agent has signed a document confirming employment of the tenants commenced in November

2012. As the tenants moved to a different unit to commence employment, with no break between tenancies, it is obvious that the tenancy in question ended in October 2012 with the next tenancy commencing immediately.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Section 39 of the Act sets out the impact the flows from a failure to provide a written forwarding address to a landlord at the end of a tenancy.

Landlord may retain deposits if forwarding address not provided

39 *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find that the landlord was well aware of the tenant's new address after October 31, 2012, as the landlord had hired the tenants who were living in another unit owned by the landlord. However, the tenants did not meet the requirement of section 38 of the Act, by giving the landlord their written forwarding address within one year of October 31, 2012. Provision of the written address is a triggering event, which then sets section 38 of the Act in motion.

I find that the tenants did provide the landlord with a forwarding address effective October 28, 2014, as part of the application for dispute resolution that is before me. However, the time limit set out in section 39 of the Act was not satisfied in relation to the tenancy that ended effective October 31, 2012. When the tenants failed to provide their address by October 31, 2013 I find they extinguished their right to return of the security deposit.

Therefore, I find that the tenant's application requesting return of double the security deposit is dismissed.

During the hearing discussion occurred in relation to the tenancy that followed the one in dispute. Pursuant to section 62(3) of the Act I find that the landlord transferred the $297.50 security deposit to that new tenancy which commenced on November 1, 2012. I have made this finding, based on the testimony of the landlord. The landlord

confirmed the security deposit was not returned to the tenants but simply transferred to the tenancy that followed. Any further findings related to the tenancy that followed the tenancy that ended October 31, 2012 are left to a future hearing.

Conclusion

The application is dismissed.

This decision is final and binding and 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 02, 2015

Residential Tenancy Branch