Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1348 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Dispute Resolution Package

The tenant testified that she served the landlord with the dispute resolution package on 5 July 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The tenant testified that the package was returned unclaimed.

The tenant testified that she sent the dispute resolution package to the landlord's residence. The tenant testified that this address is the same address the landlord provided to the owner of the rental unit as the landlord's forwarding address. The tenant testified that she attended at this address to personally deliver her forwarding address. The tenant testified that she spoke to the landlord's partner. The landlord's partner confirmed the landlord resided at that address, but was not currently home. On the basis of this evidence, I find that the address used by the tenant for service of the dispute resolution package is the address at which the landlord resides.

Service of the dispute resolution package, in an application such as the tenant's, must be carried out in accordance with subsection 89(1) of the Act. Paragraph 89(1)(c) of the Act permits service by registered mail to the address at which the person resides. I find that the tenant served the dispute resolution package in accordance with paragraph 89(1)(c) of the Act.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

> Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89 and 90 of the Act, the landlord was deemed served with the dispute resolution package on 10 July 2015, the fifth day after its mailing.

Preliminary Issue – Jurisdiction

At the hearing, I asked the tenant to make submissions as to whether or not I have jurisdiction under the Act to consider this application. Of particular concern to me was whether or not the landlord is, in fact, a "landlord" within the meaning of the Act.

The landlord was duly served and did not attend the hearing to provide any submissions on this issue.

Section 1 of the Act defines "landlord":

> "landlord", in relation to a rental unit, includes any of the following:
>
> …
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

The tenant testified that she answered the landlord's advertisement on the internet looking for a person to rent one room and share common areas in a basement suite. The tenant always paid rent to the landlord and never directly to the owner of the rental unit. The parties entered into a "roommate agreement" that specified that rent was payable directly to the landlord. The tenant paid a security deposit to the landlord and not directly to the owner of the rental unit. The tenant testified that she delivered her notice to end tenancy to both the landlord and the owner of the rental unit. The tenant

testified that the landlord and the owner entered into a tenancy agreement, but that the tenant was not party to this tenancy agreement. The tenant testified that she did not have any contact with the owner of the rental unit until the end of the tenancy. The tenant submits that this is a tenancy agreement between a landlord and tenant and is within the jurisdiction of the Act.

In this case, I find that the tenant had the sole right to occupy the bedroom and that this was the "rental unit" for the purposes of this tenancy. As the landlord did not occupy the rental unit, but was entitled to possession of the rental unit pursuant to the head lease and exercised rights of a landlord under the Act by collecting rent and security deposit, she is a "landlord" within the meaning of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

This tenancy began 1 June 2014 and ended 31 May 2015. Monthly rent of $800.00 was due on the first. The landlord collected a security deposit of $400.00 from the tenant at the beginning of the tenancy.

The tenant testified that on or about 18 June 2015 she attended at the landlord's residence to deliver her forwarding address in writing. The tenant testified that she left this letter with the landlord's partner who resides with the landlord.

The tenant testified that she knows of no reason why the landlord would be entitled to retain any amount from her security deposit. The tenant testified that she did not authorize any deductions from her security deposit. The tenant testified that there are no outstanding orders of the Residential Tenancy Branch in respect of this tenancy.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, 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.

On the basis of the uncontested evidence of the tenant, I find that the tenant provided her forwarding address in writing to the landlord on 18 June 2015. I find that the tenant delivered her forwarding address in writing to the landlord pursuant to paragraph 88(e) of the Act. There is no evidence before me that indicates that the landlord was entitled to retain any amount of the tenant's security deposit. The landlord had until 3 July 2015 to return the tenant's security deposit in full. As this has not happened, the tenant is entitled to return of her security deposit.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
>
> - If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> - If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
> - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
> - If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
> - whether or not the landlord may have a valid monetary claim.

At the hearing I asked the tenant if she was waiving her right to doubling of the deposit. The tenant informed me that she was not. There is no evidence before me that indicates that the tenant's right to return of the deposit has been extinguished. As the landlord has not filed a claim within fifteen days of receiving the tenant's forwarding address and as the landlord has not returned the tenant's security deposit, I find that the tenant is entitled to a monetary order equivalent to the amount of the security deposit.

As the tenant has been successful in her application, she is entitled to recover her filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $850.00 under the following terms:

Item	**Amount**
Return of Security Deposit	$400.00
Subsection 38(6) Compensation	400.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$850.00**

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 subsection 9.1(1) of the Act.

Dated: December 14, 2015

Residential Tenancy Branch