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* ("*Act*") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the landlords, pursuant to section 72.

The landlord, SOC ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she had authority to speak on behalf of "landlord MT," the other landlord named in this application, as an agent at this hearing (collectively "landlords"). This hearing lasted approximately 55 minutes in order to allow both parties to fully present their submissions.

This matter was previously heard by a different Arbitrator on September 21, 2015 and a decision was made on the same date. The landlords applied for a review of that decision and a new hearing was granted by another Arbitrator, pursuant to a review consideration decision, dated October 30, 2015. The review consideration decision indicates that the landlords were entitled to a new hearing because they were unable to attend the original hearing on September 21, 2015, as they did not receive a copy of the tenant's application. The landlords were required to serve the tenant with a copy of the review consideration decision. Once the decision was served upon the tenant, the tenant was required to serve a copy of her original application and evidence upon the landlords.

The tenant confirmed receipt of the review consideration decision, dated October 30, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the review consideration decision.

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

At the outset of the hearing, the tenant confirmed that she did not pay a $50.00 filing fee for this Application, as the fee was waived. The tenant confirmed that she paid a filing fee for another application that she originally filed against the landlord and subsequently cancelled. I notified the tenant that she was not entitled to recover the filing fee for a previous cancelled application. I further advised the tenant that she was not entitled to recover her filing fee for this Application, as she did not pay for it. Accordingly, the tenant's application to recover the $50.00 for this Application is dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

While I have turned my mind to 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 claims and my findings are set out below.

Both parties agreed that the tenant signed a rental application with the landlords' agent on December 12, 2013, for a tenancy to begin on January 1, 2014. Both parties agreed that a security deposit of $540.00 was paid by the tenant on December 12, 2013 when she signed the rental application, as the deposit was a requirement of submitting the application. The tenant provided a copy of the receipt issued by the landlords for payment of the security deposit.

Both parties agreed that the tenant never occupied this rental unit. The tenant stated that after submitting the application and paying the deposit, she viewed the rental unit and discovered that it was a shared accommodation and she was not previously aware of this. The landlord stated that the unit was advertised as a shared accommodation and the tenant should have known this. The tenant said that she informed the landlord verbally on December 16, 2013 that she did not want to occupy the rental unit, while the landlord denied this fact. Both parties agreed that the tenant provided a text message

to the landlord on December 18, 2013, stating that she did not intend to occupy the rental unit.

The tenant claimed that she provided a letter, dated December 18, 2013, to the landlords, requesting the return of her security deposit and providing a written forwarding address. The tenant stated that she gave the letter to the person that was living in the rental unit at the time, who had FOB access to the rental building, and who agreed to put the letter in the landlords' mailbox. The landlord denied receiving such a letter. The landlord confirmed that she received a letter, dated November 5, 2015, with the tenant's new written forwarding address on November 18, 2015. The tenant confirmed that she sent this letter by registered mail to the landlords on November 10, 2015, after completing a title search in order to obtain the landlords' residential mailing address.

The tenant seeks the return of double the value of her security deposit, totalling $1,080.00, from the landlords. The landlord stated that the landlords are entitled to keep the security deposit of $540.00 because the tenant signed the rental application indicating that the tenant forfeited the security deposit if she was approved for occupancy but did not occupy the rental unit.

Analysis

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. I find that the tenant signed a rental application and paid a security deposit for a tenancy to begin on January 1, 2014. I find that the tenancy ended on December 18, 2013, when both parties agreed that the tenant sent a text message to the landlords to advise that she wanted to end the tenancy, prior to her occupying the rental unit. Although this notice was not served in accordance with section 88 of the *Act*, I find that the landlords were sufficiently served with the tenant's notice as per section 71(2)(c) of the *Act*, as the landlord confirmed that she received the text message and she was aware that the tenant did not wish to occupy the rental unit.

Section 38 of the *Act* requires the landlords 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 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 deposit. However, this provision does not apply if the landlords have 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 landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section 20(e) of the *Act* states that the landlord cannot require or include as a term of the tenancy agreement that the landlord keeps all of the security deposit. The landlords required the tenant to sign a rental application forfeiting her security deposit if she was approved for the unit but decided not to occupy the unit for any reason. This is an illegal and unenforceable provision of the rental application. Therefore, I find that the tenant could not have given written permission to the landlords to retain her security deposit because the landlord was attempting to enforce an illegal provision in the rental application and was attempting to contract outside of the *Act*, as per section 5.

Although it has been over a year since the end of the tenancy, I find that the landlords are not entitled to keep the tenant's security deposit as per section 39 of the *Act*, despite the fact that the landlords had not received a written forwarding address from the tenant. I find that the landlords were avoiding service by failing to provide a service address to the tenant, thereby preventing the tenant from serving her written forwarding address upon the landlords. I find that the landlords failed to provide their service address to the tenant, despite the tenant's repeated requests to the landlords' agent through email and text messages. The tenant provided a printed copy of these communications. The landlord confirmed that she was advised by the landlords' agent about these requests. The landlord stated that the landlords' agent was instructed not to provide the landlords' mailing address to the tenant because it was their personal residential address, which was confidential. The landlord confirmed that the tenant should have known to use the rental unit as the landlords' mailing address for service, despite the fact that the landlords were not living there, there were other tenants living in the rental unit and the landlords had not previously given this as a service address to the tenant. I find that tenant could not have known that the rental unit was the appropriate place to serve the landlords with her written forwarding address, particularly given the fact that she attempted to serve her written forwarding address to the mailbox in the rental building in December 2013 and the landlord said she did not receive that letter.

The tenant had to complete a title search in order to obtain the landlords' current residential mailing address. The tenant provided a copy of this title search. The landlord confirmed that the address obtained by the tenant through the title search was the landlords' current mailing address. Therefore, I find that the tenant provided her forwarding address to the landlords by way of a letter, dated November 5, 2015, which

the landlords received on November 18, 2015, by way of mail. The landlords did not return the tenant's security deposit or file an application to retain it within 15 days of November 18, 2015. The landlords had until December 3, 2015, the day before this hearing, to complete the above actions but failed to do so.

Over the period of this tenancy, no interest is payable on the landlords' 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 $1,080.00.

Conclusion

This decision replaces the previous hearing decision, dated September 21, 2015, of the previous Arbitrator.

The tenant's Application to recover the $50.00 filing fee for this Application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of $1,080.00 against the landlords. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 monetary order of $1,080.00 replaces the previous monetary order, dated September 21, 2015, issued by the previous Arbitrator.

The previous Arbitrator's monetary order for $1,130.00, dated September 21, 2015, is cancelled and of no force or effect.

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: December 07, 2015

Residential Tenancy Branch