Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bernard C. Vinge & Associates (HCS)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, OLC. FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on July 22, 2015 the Application for Dispute Resolution, the Notice of Hearing, and 46 pages of evidence the Tenant submitted to the Residential Tenancy Branch on July 28, 2015 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord stated that on December 31, 2015 he served his evidence package to the Tenant, by express post. He stated that the Canada Post website indicates these documents were received by the Residential Tenancy Branch on January 05, 2016.

The Landlord stated that on December 31, 2015 he submitted an evidence package to the Residential Tenancy Branch, by express post. The Agent for the Tenant acknowledged receiving the evidence package on January 04, 2016.

The parties were advised that I was not in possession of the Landlord's evidence package; that I would therefore be unable to consider those documents during the hearing; and that they would not be accepted as evidence for the proceedings.

In determining that the Landlord's evidence package would not be accepted as evidence for these proceedings I was heavily influenced by the fact the evidence was not served in accordance with the Residential Tenancy Branch Rules of Procedure, which require that a respondent's evidence be received by the Residential Tenancy Branch and the applicant at least seven days prior to the hearing. This allows an applicant a reasonable time to consider the evidence and it allows the Residential Tenancy Branch time to forward the evidence to arbitrators.

In determining that the Landlord's evidence package would not be accepted as evidence for these proceedings I was further influenced by the fact the Landlord was aware of these proceedings in July of 2015 and he had, in my view, ample time to serve documents in a timelier manner.

In determining that the Landlord's evidence package would not be accepted as evidence for these proceedings I was further influenced by the fact the Application for Dispute Resolution was filed in July of 2015 and by my conclusion that adjourning the hearing to provide me time to obtain the Landlord's evidence package would be unfair to the Tenant. I find it would be unfair to the Tenant because an adjournment would delay these proceedings by over one month and the Landlord is holding the Tenant's security deposit.

The Landlord was advised that during the hearing he would be permitted to discuss any relevant document he had submitted and if he was able to establish that a document was highly relevant I would consider adjourning the hearing for the purposes of reviewing that document. This did not occur.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Neither party was permitted to present evidence regarding the condition of the rental unit, as that matter is not relevant to the issues in dispute at these proceedings. The Landlord retains the right to file an Application for Dispute Resolution if he believes he is entitled to compensation arising from damage to the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit and to recover costs associated with moving?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on January 15, 2014;
- there is a written tenancy agreement;
- the Tenant agreed to pay monthly rent of $2,300.00 by the fifteenth day of each month;
- a security deposit of 1,150.00 was paid;
- a condition inspection report was completed at the start of the tenancy;
- the tenancy ended on June 15, 2014;

- the parties met on June 15, 2015 for the purposes of completing a condition inspection report;
- the condition inspection report was partially completed on June 15, 2015, but neither party signed the report;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit;
- in June of 2015 the Landlord sent the Tenant a cheque for $280.00, which represented a partial return of the security deposit; and
- the Tenant has not cashed the cheque for $280.00.

The Agent for the Tenant stated that when this tenancy ended the Landlord was told that he could continue to contact the Tenant at the Tenant's business address, which is different from the address of the rental unit. The Landlord stated that prior to the end of the tenancy he had been given the Tenant's business address, which is where he sent the cheque for $280.00.

The Landlord stated that he never received a forwarding address from the Tenant after the tenancy ended.

The Agent for the Tenant stated that on June 22, 2015 the Agent for the Landlord #2 sent in an email to the Landlord, in which she informed him that he could contact her regarding the tenancy. She stated that the Landlord's address was at the bottom of that email.

The Landlord stated that he did receive an email from the Agent for the Tenant #2 after the tenancy ended, but he does not recall there being an address on the email.

Upon reviewing the email sent, the Agent for the Tenant acknowledged that the Landlord's address is not included in the email.

The Landlord and the Tenant agree that this tenancy ended on the basis of a One Month Notice to End Tenancy that was served to the Tenant on April 29, 2015, which declared the Tenant must vacate the rental unit by June 15, 2015. The parties agree that the Tenant did not file an Application for Dispute Resolution seeking to dispute this Notice to End Tenancy.

The Tenant is seeking $2,336.00 in costs the Tenant incurred as a result of moving out of the rental unit. The Agent for the Tenant believes the Tenant is entitled to compensation for these costs because she does not believe the Landlord had proper grounds to end this tenancy.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

The undisputed evidence is that the Tenant did not provided the Landlord with a forwarding address, in writing, until the Landlord was served with the Application for Dispute Resolution. Even if the Tenant's mailing address does not change after the tenancy ends, I find that the section 38(1) requires the Tenant to confirm that matter in writing.

As the Tenant did not provide the Landlord with a forwarding address, in writing, prior to filing the Application for Dispute Resolution I find that the Tenant's claim to recover the security deposit is premature. I therefore dismiss the application to recover the security deposit, with leave to reapply.

The Tenant retains the right to provide the Landlord with a forwarding address, in writing, in a manner than complies with section 88 of the *Act.* The Tenant retains the right to file another Application for Dispute Resolution to recover the security deposit if the Landlord does not return the security deposit or claim against the deposit after being provided with the forwarding address.

The Landlord retains the right to file an Application for Dispute Resolution claiming against the security deposit.

The Landlord and the Tenant are entitled to settle the matter of the security deposit, by mutual consent, if they do not wish to resolve this dispute at a formal dispute resolution proceeding.

On the basis of the undisputed evidence, I find that both the Landlord and the Tenant failed to comply with section 35(4) of the *Act* when they did not sign the condition inspection report that was partially completed on June 15, 2015. As the parties breached section 35(4) of the *Act* at the same time, I find that neither one of them is subject to any consequences arising from those breaches.

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons by giving proper notice to end the tenancy. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy, served pursuant to section 47 of the *Act.*

Section 47(4) of the *Act* allows a tenant to dispute a One Month Notice to End Tenancy by filing an Application for Dispute Resolution within ten days of receiving the Notice. This provides tenants with the right to challenge the landlord's right to end the tenancy and, if successful with that challenge, means that the tenancy will continue. The undisputed evidence is that the Tenant did not dispute the One Month Notice to End Tenancy.

Section 47(5) of the *Act* stipulates that if a tenant who has received a One Month Notice to End Tenancy does not file an Application for Dispute Resolution to dispute the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and that the Tenant must vacate the rental unit by that date. As the Tenant did not dispute the Notice to End Tenancy I find that the Tenant was obligated to vacate the rental unit on the basis of that Notice.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Tenant should have filed an Application for Dispute Resolution to dispute the Notice to End Tenancy if the Tenant believed the Landlord did not have grounds to end this tenancy. Had the Tenant successfully disputed the Notice to End Tenancy, the Tenant would not have incurred the costs of moving. As the Tenant did not mitigate the Tenant's losses by disputing the Notice to End Tenancy, I find that the Tenant is not entitled to compensation for any costs associated with moving out of the rental unit.

I find that the Tenant has failed to establish the merits of this Application for Dispute Resolution and I therefore dismiss the Tenant's claim to recover the fee for filing this Application.

Conclusion:

The Application for Dispute Resolution is dismissed in its entirety.

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: January 08, 2016

Residential Tenancy Branch