Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MANAGMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on July 22, 2015 for the return of his security and pet damage deposit and for the Landlord to comply with the *Residential Tenancy Act* (the "Act") in giving the Tenant double the amount of the pet damage and security deposit. The Tenant also applied to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the 15 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that the agent of the company Landlord who he dealt with during this tenancy was personally served with a copy of the Application, the Notice of Hearing documents, and a copy of the evidence on July 24, 2015. Based on the undisputed evidence of the Tenant, I find the Landlord was served with the required documents for this hearing pursuant to Section 89(1) (b) of the Act. The hearing continued to hear the undisputed evidence of the Tenant. I have reviewed all evidence and testimony before me but I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant testified that this tenancy started on August 1, 2010 for a fixed term of one year. The parties renewed the tenancy on August 1, 2011 for another year due to end on July 31, 2012; after this time the tenancy continued on a month to month basis. Rent in the amount of $1,300.00 was payable on the first day of each month. The Tenant

paid the Landlord a security deposit of $650.00 on August 1, 2010 and a pet damage deposit of $650.00 on August 1, 2011 (the pet damage and security deposit are herein referred to as the “Deposits”).

The Tenant testified that the tenancy was ended with a 2 month notice for the owner’s use of the property effective June 30, 2015. As a result, the Tenant moved out on June 29, 2015 and completed a move-out Condition Inspection Report (the “CIR”) with the Landlord on June 29, 2015. The Tenant testified that he provided the Landlord with a forwarding address on the move-out CIR.

However, despite repeated requests by the Tenant, as shown in the Tenant’s email evidence provided for this hearing, the Landlord failed to provide or locate a copy to give to the Tenant. The Tenant confirmed that he has still not received a copy of it.

The Tenant testified that 15 days after the tenancy had ended he contacted the Landlord and asked for the Deposits. However, the Landlord explained to the Tenant that some of the Deposits were used to offset against rent; the Tenant informed the Landlord that he did not consent to allowing the Landlord to do this.

The Tenant testified that on July 16, 2015 he was contacted by the Landlord and asked to pick up his security deposit from the business office where the Landlord carries on business. The Tenant testified that when he went to collect this money on July 16, 2015 he also requested the Landlord for the pet damage deposit. The Tenant testified that on July 24, 2015, when he served the Landlord with notice of this hearing he was issued with a cheque for the pet damage deposit. The Tenant provided evidence to support the dates that the cheques for the Deposits were issued to him.

The Tenant confirmed that he had not given the Landlord written consent to withhold or make any deductions from the Deposits. Although the Tenant has received the return of the Deposits, the Tenant now seeks to recover double the amount based on the failure of the Landlord to deal properly with the Deposits at the end of the tenancy.

Analysis

The Act contains comprehensive provisions on dealing with a tenant’s Deposits. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on June 30, 2015 through the Landlord's notice to end tenancy. I also accept the Tenant's undisputed oral evidence that he provided the Landlord with a forwarding address in writing on June 29, 2015 which was documented on the move-out CIR. Therefore, the Landlord would have had until July 15, 2015 to deal properly with the Tenant's Deposits pursuant to the Act.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold it. Rather, the evidence before me is that the Tenant was returned his Deposits on July 16 and July 24, 2015, these dates being after the 15 day time period had elapsed. Therefore, I find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act. Furthermore, Section 36 of the Act explains the consequences for a party if the reporting requirements of the Act are not followed. Section 36(2) states:

> **"***Unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
> *(a) does not comply with section 35 (2) [2 opportunities for inspection]*
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
> *(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."*
>
> [Reproduced as written]

Based on the foregoing, I find the Landlord also failed to comply with Section 36(2) (c) of the Act because the Tenant was not provided with a copy of the move-out CIR in accordance with the 15 day time limit stipulated by the regulations.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The Deposits were held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of Deposits or to deductions to be made from them, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.
It is not enough that a landlord feels they are entitled to keep the Deposits, based on unproven claims. A landlord may only keep Deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant.

Here the Landlords did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the Landlord would not have been entitled to retain any portion of the Deposits.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant would have therefore been entitled to double the return of the Deposits in the amount of $2,600.00 ($1,300.00 x 2).

As the Landlord already returned the Deposits back to the Tenant, I grant the Tenant the balance owed in the amount of $1,300.00. As the Tenant has been successful in this matter, the Tenant may recover the $50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenant is issued with a Monetary Order for $1,350.00.

This order must be served on the Landlord. The Tenant may then file and enforce the order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's Deposits. Therefore, the Tenant is awarded double the amount back minus the amount already returned by the Landlord. The balance outstanding to the Tenant is $1,350.00.

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 12, 2016

Residential Tenancy Branch