Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on July 24, 2015 for the return of the security deposit.

One of the Tenants appeared for the hearing and provided affirmed testimony. The Tenant was allowed to submit evidence after the hearing had concluded pursuant to Rule 3.19 of the Residential Tenancy Branch Rules of Procedure. This is because the evidence being provided by the Tenant was tenancy agreement and email evidence between the parties which the Landlords would have been aware of prior to this hearing.

There was no appearance for the Landlords 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 Tenants. The Tenant testified that he served the Landlords with a copy of the Application and the Notice of Hearing documents to the service address on the tenancy agreement. This was done by registered mail on July 29, 2015. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service. This number is noted on the front page of this decision.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find that the Landlords were deemed served with the required documents on August 3, 2015 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Tenant testified that this tenancy started on May 1, 2014 for a fixed term of one year after which time the tenancy ended on April 30, 2015. Rent in the amount of $1,700.00 was payable on the first day of each month. The Tenants paid the Landlords a security deposit of $850.00 in May 2014, which the Landlords still retain.

The Tenant testified the Landlords failed to complete a move-out Condition Inspection Report (the "CIR") before the tenancy ended. The Tenant testified that on May 4, 2015 he provided the Landlords with a forwarding address by email. This email was provided into evidence. The Tenant testified that on May 10, 2015, the Landlords responded to that email thread, which was also provided into evidence.

The Tenant testified that he saw the Landlords in person on May 12, 2015 who confirmed that they had received the Tenants' forwarding address and they would return the money in two weeks as this was what was allowed under the Act. The Tenant testified that he contacted the Landlords by email again on May 23, 2015 who apologised for the delay and promised that they would return it which they have not. Therefore, the Tenants now seek to claim double the amount back of $1,700.00.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. 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 April 30, 2015 through the ending of the fixed term tenancy. While email is not a recognized form of serving documents under the Act, I accept the Tenant's undisputed email correspondence between the parties that the Landlords were indeed put on notice of the Tenants' forwarding address.

I further accept that this address was received by the Landlords on May 10, 2015 which is when they responded to the Tenants' email. Therefore, I find the Landlords would have had until May 15, 2015 to deal properly with the Tenants' security deposit pursuant to the Act.

There is no evidence before me the Landlords made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I must find the Landlords 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 Landlords also failed to comply with Section 36(2) (b) of the Act because the Landlords failed to do a move-out CIR.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlords. 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 it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant. Here the Landlords did not have any authority under the Act to keep the Tenants' security deposit.

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 Tenants are entitled to double the return of their security deposit in the amount of $1,700.00.

As the Tenants have been successful in this matter, I also allow the Tenants to recover the $50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenants are issued with a Monetary Order for $1,750.00.

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

Conclusion

The Landlords have breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants are granted a Monetary Order of $1,750.00 for double the amount back plus their filing fee.

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 18, 2016

Residential Tenancy Branch