Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX ELK VALLEY REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit and compensation under Section 38. The tenant further seeks compensation for loss of use in respect to an inoperative stove burner. The application is inclusive of an application for recovery of the filing fee.

The *style of cause* of this matter has been altered by consent of both parties to accurately reflect the name of the landlord and correct the spelling of the tenant's name.

Both parties were represented at today's hearing. The landlord acknowledged receiving the tenant's Notice of Hearing package on August 05, 2015. Both parties submitted evidence to this matter, although the landlord testified they failed to provide their evidence to the tenant. As a result, I determined the landlord's evidence inadmissible. None the less, the parties were permitted to present any relevant evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters in dispute, but were unable to agree. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows.

The tenancy began March 01, 2014 and ended June 13, 2015 when the tenant vacated. Rent was $900.00 payable in advance on the 1st. of every month. The landlord collected a security deposit of $450.00 at the outset of the tenancy, which they retain in trust. A condition inspection and Condition Inspection Report (CIR) were completed at *the start* of the tenancy and the parties agree the CIR was not eventful and did not indicate any deficiency in the unit. On June 13, 2015 the parties came together to do *an end* of tenancy condition inspection in which the landlord provided the tenant a list of deficiencies for remedy by the tenant, but did not complete a CIR. The tenant claims they attended to the landlord's list and expected the return of their deposit, but the landlord was not wholly satisfied with the condition of the unit and advanced additional demands of the tenant. The landlord claims that following the June 13, 2015 inspection they attempted to arrange a second or follow up inspection of the unit but the tenant did not co-operate therefore a second mutual inspection did not occur. The tenant disputed the landlord's additional claims. The landlord chose not to complete a CIR on their own; however, sent the tenants invoices for remedial work to the rental unit.

The tenant provided an abundance of e-mail correspondence between the parties. The landlord testified receiving the tenant's forwarding address in an e-mail on July 27, 2015, after informing the tenant the landlord would then have 15 days to return the deposit following receipt of the forwarding address. The tenant acknowledged filing their application prematurely: 6 days after providing their forwarding address to the landlord. On receiving the tenant's premature application the landlord determined to wait for the hearing as they reasoned it was now too late to continue in their course to resolve any dispute regarding the deposit.

The tenant also seeks compensation for loss of use of the main burner of the rental unit stove. The parties agree the tenant went without the use of the main burner on their stove for a 5 week period during April and May 2015. The parties agree the tenant still had use of the other 3 smaller burners and the oven during this period. The landlord ultimately replaced the entire stove on May 22, 2015. The tenant claims that due to the lack of the main burner for the stove they were not able to properly cook their meals in a timely way and at times went to the home of

others to do so or purchased meals due to their busy schedule. The tenant seeks compensation in respect to this portion of their claim in the amount of $250.00.

Analysis

On preponderance of all the relevant evidence for this matter, I have reached a Decision.

Section 38(1) of the Act provides as follows **(emphasis mine)**

> **38**(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**
>
> 38(1)(a) the date the tenancy ends, and
>
> 38(1)(b) the date the landlord receives the tenant's forwarding address **in writing**,
>
> the landlord **must** do one of the following:
>
> 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the evidence is that the tenant provided their forwarding address in an e-mail, rather than *in writing* as prescribed in the Act. Moreover, despite the landlord's acknowledgment they received it I accept the landlord's reasoning that upon the tenant filing for dispute resolution prematurely the landlord was of the mind that moving forward within their entitled 15 day window to resolve the deposit was futile. As a result, I find the tenant did not provide a forwarding address *in writing* and the landlord was sufficiently justified in not acting further in administering the deposit upon receiving the tenant's application for dispute resolution prematurely.

For the purposes of this matter, I find that serving the Application for dispute resolution with the tenant's forwarding address on it now constitutes providing it *in writing*. The landlord is now placed on notice they now have the forwarding address in writing and must deal with the security deposit pursuant to Section 38 of the Act.

I Order the landlord is deemed to have received the Decision 5 days after the date of the Decision, and has **15 days from that date** to administer the security deposit pursuant to Section 38. The tenant's application is **dismissed** *with leave to reapply* for double the deposit if the landlord does not return the deposit in its entirety or has not made a claim against it, within the 15 days to do so.

In respect to the tenant's claim for loss of use of the main burner of their stove, I accept the tenant's testimony the lack of the burner caused a sum of inconvenience. I find the tenant's claim of loss valid. However, I find the tenant's claim of $250.00 extravagant considering the tenant had 3 other burners and an oven available. I grant the tenant nominal compensation for loss of use of the burner in the amount of **$75.00.**

I find the tenant was only fractionally, and insufficiently successful in their claim so as to be entitled to recover their filing fee.

Conclusion

The tenant's application for the return of their security deposit is dismissed, *with leave to reapply* for double the amount if the landlord does not administer the security deposit, in accordance with Section 38.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$75.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: February 02, 2016

Residential Tenancy Branch