Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing deal with the tenants' application for a Monetary Order for return of double the security deposit and return of rent paid. The landlord did not appear at the hearing. The tenants provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the landlord on September 28, 2015. The registered mail was returned to the tenants for the reason it was "refused by recipient" on September 29, 2015. Section 90 of the Act deems a person to have received documents five days after mailing even if the recipient refuses to pick up or accept their mail. Accordingly, I found the landlord to be deemed to have received the hearing documents and I continued to hear from the tenants without the landlord present.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Are the tenants entitled to return of rent paid for the rental unit for the month of September 2015?

Background and Evidence

On August 27, 2015 the tenants and the landlord signed a document prepared by the landlord for a one-year tenancy set to commence September 1, 2015. The rental unit is a basement suite and the landlord resides in the upper unit. The document also reflects payments to the landlord of $625.00 for a security deposit and $1,250.00 for rent for September 2015.

On August 29, 2015 the tenant emailed the landlord to express concerns that the landlord may not provide them with as much independence as the tenants were seeking. On August 30, 2015 the tenant emailed the landlord to indicate the tenants wished to cancel the tenancy agreement. The tenants requested the landlord enter into a mutual agreement to end tenancy.

On August 31, 2015 the landlord responds to the tenants via email. She views the request to enter into a mutual agreement to end tenancy as harassment and indicates she will look into her rights for compensation. At 8:26 a.m. on September 1, 2015 the landlord sends another email indicating that she is advertising the suite again and would let the tenants know if she gets another tenant.

At approximately 9:30 a.m. on September 1, 2015 the tenants attended the residential property in an effort to meet with the landlord. The tenants saw the landlord driving up to the property, stop and then instead of coming to the residential property she parked in a neighbour's driveway for 10 minutes before driving away.

At 9:47 a.m. on September 1, 2015 the tenants emailed the landlord as they were of the impression the landlord was avoiding them. In the email they propose three options to the landlord:

1. Enter into a mutual agreement to end tenancy;
2. Permit the tenants to assign the tenancy agreement; or,
3. Provide the tenants with possession of the unit since they paid the rent for September 2015.

By way of an email sent at 11:25 a.m. on September 1, 2015 the landlord responded to the above email. She indicates the tenants do not have any right to access the property. Further, she considers the tenants attendance to the residential property to be trespassing and she will call a security company that is located a block away if they attend the property again. The landlord states that email is the method of communication she will have with them.

On September 1, 2015 the tenants put a letter in the landlord's mailbox. By way of the letter the tenants request return of the rent they paid for September 2015 since the landlord did agree to one of the options proposed and return of their security deposit. The letter included the tenant's forwarding address. The tenants took a video of placing the letter in the mailbox at the landlord's residence.

The landlord did not refund the rent or the security deposit to the tenants and did not file an Application for Dispute Resolution seeking authorization to retain the security deposit.

Documentary evidence included copies of: the tenancy agreement signed on August 27, 2015; the various emails exchanged between the parties as described above; a copy of the letter placed in the landlord's mailbox on September 1, 2015; a copy of handwritten

notes the tenants made detailing the various events described above; and, the registered mail receipt for service of the hearing documents sent to the landlord.

Analysis

Upon consideration of the unopposed evidence before me, I provide the following findings and reasons with respect to each of the claims made by the tenants.

Return of rent paid for September 2015

Under section 16 of the Act, 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. Section 20 also provides that a security deposit can only be required when a tenancy forms. In this case, the parties signed a tenancy agreement and a security deposit was paid on August 27, 2015. Therefore, I find that both parties became obligated to fulfill the terms of tenancy when the tenancy agreement was signed on August 27, 2015 and the security deposit was paid. For the tenants this means paying rent and for the landlord, this means providing the tenants with possession of the unit starting September 1, 2015.

I find the three options proposed by the tenants by way of their email sent September 1, 2015 to be lawful remedies under the Act. Since the landlord would not agree to enter into a mutual agreement to end tenancy the tenancy or agree to allow the tenants to assign the tenancy agreement I find the tenancy was still in effect and the tenants were entitled to possession of the rental unit under their tenancy agreement. I find the landlord's refusal to give the tenant's possession of the rental unit on September 1, 2015 since they had a binding agreement and the tenants had paid rent for September 2015 to be without basis under the Act. Accordingly, I find the landlord's actions were a significant breach of the Act and I find the landlord's actions effectively brought this tenancy to an end as of September 1, 2015.

Section 44 of the Act provides for ways a tenancy ends. As provided under section 44(1)(f) one way a tenancy ends is when "the director orders that the tenancy is ended". In keeping with my findings above, I order that this tenancy ended effective September 1, 2015.

In light of the above, I order the return of the rent the tenants paid to the landlord for the month of September 2015 and I award the tenants $1,250.00 as requested.

Return of double the security deposit

Section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against unless the landlord otherwise has a legal right to retain the security deposit, as provided in limited circumstances under the Act. The landlord's time limit for refunding the security deposit or filing an Application to retain it is 15 days after the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenants extinguished their right to return of the security deposit; nor, did the tenants authorize the landlord to retain the security deposit in writing. I also accept the undisputed evidence before me that the tenants provided the landlord with a forwarding address in writing by way of the letter placed in the landlord's mailbox on September 1, 2015. Pursuant to section 90 of the Act, the landlord is deemed to have received the letter three days after the letter was left in the mailbox. Therefore, I find the landlord is deemed to have received the tenant's forwarding address, in writing, on September 4, 2015.

Since the landlord did not have the tenant's written consent to retain the security deposit, I find the landlord was required to either refund the security deposit to the tenants or file an Application for Dispute Resolution to retain by September 19, 2015 [calculated as being 15 days after receiving the forwarding address] in order to comply with section 38(1) of the Act. Since the landlord did not refund the security deposit or file an Application for Dispute Resolution by that date, I find the landlord failed to comply with section 38(1) of the Act and the landlord is now obligated to pay the tenants' double the security deposit or $1,250.00. Therefore, I grant the tenants' request for return of double the security deposit.

As the tenants were successful in their application I further award the tenants recovery of the $50.00 filing fee they paid for their Application.

In light of all of the above, I provide the tenants with a Monetary Order in the total amount of $2,550.00 [calculated as $1,250.00 + $1,250.00 + $50.00] to serve and enforce upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The tenants have been provided a Monetary Order in the total sum of $2,550.00 to serve and enforce upon the landlord.

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: April 27, 2016

Residential Tenancy Branch