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 Tenant on November 12, 2015 for the return of double the security deposit.

The Tenant appeared for the hearing with a legal advocate and the Tenant provided affirmed testimony. There was no appearance for the Landlord during the ten 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 she served the Landlord with a copy of the Application and the Notice of Hearing documents to the service address on the tenancy agreement which was also the rental unit address. This was done by registered mail on November 20, 2015. The Tenant 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. Based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served with the required documents on November 25, 2015 pursuant to the Act.

Issue(s) to be Decided

Is the Tenant entitled to the return of double her security deposit?

Background and Evidence

The Tenant testified that this tenancy started on June 15, 2015. Although it was not provided into evidence, the Tenant testified that a written tenancy agreement was completed and it was a month to month tenancy where the Tenant was required to pay

$600.00 rent on the first day of each month. The Tenant paid the Landlord a security deposit of $300.00 on June 12, 2015, which the Landlord still retains.

The Tenant testified that she provided the Landlord with written notice on August 31, 2015 to end the tenancy for September 30, 2015, which was the day she vacated the rental unit. The Tenant testified that she provided the Landlord with a forwarding address in a letter which she personally served to the Landlord on October 23, 2015. The Tenant provided a copy of the written letter which documents that forwarding address.

The Tenant did not provide any written notice to the Landlord to keep the security deposit. Therefore, the Tenant now seeks to claim double the amount back of $600.00.

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 September 30, 2015 through the Tenant's written notice and that the Landlord was served on October 23, 2015 with the Tenant's forwarding address in writing. Therefore, the Landlord would have had until November 7, 2015 to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to keep it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was 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 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 Landlord did not have any authority under the Act to keep the Tenant's 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 Tenant is entitled to double the return of her security deposit in the amount of $600.00. Therefore, the Tenant is issued with a Monetary Order for this amount.

This order must be served on the Landlord. The Tenant may then file and enforce the order in the Small Claims Division of the Provincial Court 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 security deposit. Therefore, the Tenant is granted a Monetary Order of $6000.00 for double the amount.

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: June 16, 2016

Residential Tenancy Branch