Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit not yet refunded. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Service of hearing documents was explored at the commencement of the hearing. The lawyer appearing for the applicant stated that the landlord was avoiding service and on February 9, 2016 the landlord was served with the hearing documents in person by way of process server. Since the application was filed on December 14, 2015 and an application must be served within three days of filing, as required under section 59 of the Act, I enquired as to previous attempts to serve the landlord. The lawyer stated that an attempt was made to serve the landlord by registered mail. I asked the lawyer to provide me with the date of mailing and registered mail tracking number since a registered mail receipt had not been submitted as evidence. The lawyer did not have this information readily available and indicated that her assistant would search for the information. During the remainder of the hearing the requested information was not provided to me. The landlord responded by stating that she was not avoiding service and explained that she and her husband travel frequently and extensively. The landlord stated that she did not recall seeing any notice cards from Canada Post but that if registered mail was sent to her in mid-December 2015 she and her husband were most likely away at that time. The lawyer was asked to refrain from making further inflammatory statements based on her assumptions.

Despite issues with service of the hearing documents, the landlord stated she was prepared to proceed with this matter. Accordingly, I deemed the landlord sufficiently served with the hearing documents pursuant to the authority afforded me under section 71 of the Act. Since the tenant's lawyer did not produce the registered mail receipt or tracking information I deemed the landlord to be served on February 9, 2016, the date of personal service.

Also at the outset of the hearing, the lawyer appearing on behalf of the tenant informed me that the tenant has since passed away and that she is the lawyer for the Executor of the tenant's estate. The name of the Executor was not disclosed; however, in an Affidavit signed by the tenant on November 28, 2015 the tenant indicated that she wishes to have her security deposit

and pet damage deposit returned to her or her Estate, whichever is applicable. With consent of both parties the name of the tenant was amended to name the Estate of the tenant.

On a procedural note, in the box provided on the Application for indicating the amount of the Monetary Order sought, the tenant had inserted the amount of $1,217.72. I determined that this amount represents the balance of the security deposit and pet damage deposit that has not been refunded. However, in the details of dispute the applicant also indicated that she is seeking an additional award of $1,575.00, the amount of the original security deposit and pet damage deposit, on the basis the landlord failed to comply with the Act. I found the details of dispute sufficiently clear to indicate the tenant was seeking doubling of the security deposit and pet damage deposit under section 38 of the Act and I amended the Application to indicate a total Monetary Order of $2,792.72 was being sought.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The tenant and the former landlords entered into a tenancy agreement for a two-year fixed term tenancy set to commence on September 1, 2013. Rent was set at $2,950.00 per month. The tenant paid a security deposit of $1,475.00 and a pet damage deposit of $100.00. The tenancy agreement provides that rent was to be paid by the first day of every month; however, rent payments were made and accepted on or about the 15th day of the month.

The current landlords purchased the property on or about May 1, 2015. On August 13, 2015 the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) to the tenant and the tenant received it on August 14, 2015. The 2 Month Notice has a stated effective date of October 15, 2015. The tenant withheld the rent payment of September 15, 2016 as tenant's compensation payable under section 51(1) of the Act. The tenant contacted the landlords with respect to extending her move out date to October 16, 2015 and the landlords permitted the extension.

The tenant arranged for her possessions to be removed from the rental unit on October 16, 2015. On the day of moving, the tenant was in the hospital receiving treatment and was not present at the rental unit. The crane service used to remove the tenant's possessions was used to bring the landlords' possessions into the rental unit immediately thereafter. Communications between the landlord and tenant took place by way of text messaging; however, the landlords and the tenant did not participate in a move-out inspection together. The tenant's lawyer argued that failure to give the tenant the opportunity to participate in a move-out inspection and the landlords' failure to prepare a move-out inspection report means the landlords have lost the right to make deductions from the security deposit.

The tenant remained in hospital in the weeks following the end of the tenancy until her death. The tenant's lawyer contacted the landlords to request the landlords cease communicating with the tenant. The tenant's lawyer also sent an email to the landlord or the landlord's husband on October 24, 2015 to request copies of several tenancy related documents and return for the security deposit and pet damage deposit. I was not provided a copy of the email in the evidence; however, the tenant's lawyer read from it during the hearing. The tenant's lawyer argued that the email should be considered as providing the landlord with a forwarding address in writing on the basis the Act does not specifically exclude email as a form of writing.

The landlords stated that they did not understand at the time of the move-out and in the weeks that followed the reason it was so difficult to contact the tenant and they were surprised to receive communication from a lawyer. Having learned the tenant was very ill the landlords explained that they now understand the reason. The landlords testified that they had received the tenant's consent, via email and/or text messages, to make deductions from the security deposit in exchange for the extension of time given to her to move out and the lack of cleaning. The landlords tried contacting the tenant's lawyer to discuss the matters but were unsuccessful in reaching her.

The parties were in agreement that on November 3, 2015 the landlord delivered a money order to the tenant's lawyer's office in the amount of $360.28 and a letter explaining that deductions were made from the deposits, with the tenant's agreement, for cleaning and part of the crane service for moving out later than expected. The landlords also provided a copy of the invoice for the crane service.

The tenant's application was filed on December 14, 2015. The tenant's lawyer argued that receipt of the tenant's application would constitute receipt of the tenant's forwarding address in writing and the deposits should be doubled based upon receipt of the application in the event the email of October 24, 2015 is not accepted as a method of serving the landlords with a forwarding address in writing.

Analysis

Sections 23 and 35 of the Act provide that at the beginning and end of every tenancy a landlord and tenant are to participate in a move-in and move-out inspection together and the landlord is required to prepare a condition inspection report. The landlord is required to propose the date and time for the inspection to the tenant in a manner that complies with section 17 of the Residential Tenancy Regulations.

Sections 24 and 36 provide consequences to both landlords and tenants where condition inspection requirements are not met. Where the landlord does not offer the tenant two opportunities to participate in an inspection or the landlord fails to prepare a condition inspection report the landlord loses the right to make deductions from the security deposit or pet damage deposit for damage to the rental unit. The landlord may still make a claim or seek the tenant's

consent to make deductions for other amounts. Although I heard that the landlords did not propose a date and time for the move out inspection and it was undisputed that the landlords did not prepare a move-out inspection report, the landlords did not make any deductions from the deposits for damage to the rental unit.

A tenant becomes entitled to return of the security deposit and/or pet damage deposit after two things occur: the tenancy has ended and the landlord has received a forwarding address for the tenant in writing. After these two things have occurred the landlord must take action with respect to the security deposit and pet damage deposit as provided under section 38(1) of the Act, unless the tenant has extinguished her right to return of the deposits under sections 24 and 36. If the landlord does not have the tenant's written consent to make deductions, the landlord must either refund the deposits to the tenant or file an Application for Dispute Resolution. The deadline for doing so is 15 days after the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever date is later.

It is undisputed that the tenancy ended in mid-October 2015 and I find the issue to determine is whether the landlord received a forwarding address in writing as this is the triggering event that would entitle the tenant to return of the security deposit and pet damage deposit. The tenant bears the burden to demonstrate that a forwarding address was given in writing

In order to receive a forwarding address in writing, logic dictates that it must first be given in writing. Section 88 of the Act provides for ways that a document must be given to the other party. Although the tenant's lawyer orally testified that she sent an email to the landlord, or the landlord's husband, on October 24, 2015 I was not provided a copy of it. Further, section 88 does not recognize electronic mail as a manner in which to give a document. Accordingly, I find there is insufficient evidence to demonstrate that the tenant, or a person acting on behalf of the tenant, gave a forwarding address to the landlord in writing before this application was filed. Therefore, I find this application was made prematurely.

I reject the tenant's lawyer's argument that return of double the deposits should be ordered by way of this decision since more than 15 days has passed since the landlord was served with the tenant's application as I find such an approach to be prejudicial to the landlord. It is the tenant's obligation to provide the forwarding address in writing, and if it is only contained in the Application, I find it would be an inconsistent application of the law when I consider that most landlords would contemplate a written notice of the forwarding address in a separate, earlier document. Further, landlords who receive the forwarding address in writing by way of the Application only may be led to believe that because the matter is already scheduled to be adjudicated, it is too late to file a claim against the deposit. Accordingly, I find it more in these circumstances to put the landlord on notice by way of this decision that the landlord is now considered to be in receipt of a forwarding address in writing. Upon receipt of this decision the landlord is expected to take the appropriate steps with respect refunding the deposits or making a claim against them within 15 days. Failing that, the tenant may make another Application for Dispute Resolution.

For the reasons given above, the tenant's application is dismissed with leave.

Conclusion

The tenant's application was premature and is dismissed with leave to reapply. Upon receipt of this decision the landlord is considered to be in receipt of a forwarding address for the tenant in writing.

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: July 05, 2016

Residential Tenancy Branch