Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of the security deposit. 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.

Preliminary and Procedural Matters

The tenants had named the male landlord as the only respondent and sent him the hearing documents via registered mail using the service address provided by the landlords on the tenancy agreement. I heard the hearing documents were re-directed by Canada Post to the male landlord's new address and then returned to the female landlord. The male landlord did not appear at the hearing. The female landlord appeared and confirmed that the male landlord was aware of the proceeding but that he was unwell and she was handling the tenancy related matters concerning the subject property. The female landlord also requested that she be added as a named party to the dispute as she was the owner of the property along with the male landlord. The tenants questioned the standing of the female landlord appearing at the hearing and initially resisted adding the female landlord as a named party, explaining that they preferred to deal with the male landlord and had ordinarily dealt with the male landlord. I noted that the female landlord's name appears on the tenancy agreement and the 2 Month Notice to End Tenancy for Landlord's Use of Property and in other correspondence between the parties. I informed the parties that I was satisfied that the female landlord appearing before me met the definition of landlord under the Act and the tenants eventually consented to amending the application. The application was amended to add the female landlord as a named party. Since the female landlord had used two names in identifying herself I have recorded both names in the style of cause.

During the hearing the parties were informed of the provisions of the Act and Residential Tenancy Regulations pertaining to security deposits and move-in and move-

out condition inspections. The tenants requested that their security deposit be doubled if they are entitled to doubling under the Act and that they did not waive any such entitlement. The application was amended as the Act provides that the security deposit must be doubled in certain circumstances. Accordingly, I considered whether the tenants are entitled to return of double the security deposit.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy ended February 1, 2014 and the tenants paid a security deposit of $1,200.00. The monthly rent was set at $2,200.00 payable on the first day of every month. The rent was subsequently increased to $2,300.00 in the summer of 2015. The tenancy was set to end February 29, 2016 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property.

I heard that the parties conducted a move-in inspection together but that the landlords did not prepare a move-in inspection report. The landlord attempted to justify the lack of a move-in inspection report by stating the unit was clean and in good condition so there was nothing to note on an inspection report.

The parties were in agreement that a move-out inspection of the property was not performed together. The parties provided consistent submissions that on February 27, 2016 the landlords went the rental unit for a preliminary inspection and the tenants were still cleaning. The landlord texted the tenant at approximately 5:00 p.m. on February 28, 2016 and whether they considered the house clean at that point. The tenant responded by saying they had left a move-out inspection report in the rental unit and they had to work the following day. The landlords proceeded to enter the rental unit on February 29, 2016 and found a move-out inspection report prepared by the tenants. The move-out inspection report includes the tenants' forwarding address and the tenants did not authorize any deductions from their security deposit on the move-out inspection report or any other document.

As to the reason the move-out inspection was not performed together I was provided different versions of events. The landlord testified that the tenants were asked to contact the landlords when they were finished cleaning the rental unit and they did not despite waiting until 5:00 p.m. on February 28, 2016. Whereas, the tenants had submitted that they had informed the male landlord when he attended the property that

they expected to be finished cleaning around 4:00 p.m. on February 28, 2016 and they expected the landlord would return to the property then but he did not. The tenants left the property at approximately 5:00 p.m. on February 28, 2016 and left a move-out inspection report and the keys on the mantel.

The landlord testified that they proceeded to enter the unit on February 29, 2016 and performed additional cleaning and repairs as the house was being transferred to the new owners on March 1, 2016. The landlord wrote a three page letter to the tenants on March 1, 2016 and sent it to their forwarding address. In the letter the landlord indicated the tenants were responsible for compensating the landlords a sum of $2,096.00 for cleaning, damage and missing items. In the letter the landlord subtracted the security deposit and demanded the tenants pay the balance within 10 days and if they did not the landlords would “take court action.”

The tenants received the letter and did not agree with the landlord’s assessment or request for compensation. The tenants did not respond to the landlord’s letter and the landlord did not take court action or file an Application for Dispute Resolution to claim against the security deposit.

The tenants’ filed their application for Dispute Resolution on April 5, 2016 since the landlords had not refunded the deposit or filed a claim against it.

The landlord explained that she did not refund the security deposit because the landlord’s losses exceeded the amount of the security deposit. The landlord acknowledged that they have yet to file an Application for Dispute Resolution to seek compensation from the tenants.

The landlord attempted to introduce evidence concerning the condition of the rental unit at the end of the tenancy and their losses; however, I did not permit the landlord to do so as the landlords have not filed an Application for Dispute Resolution to initiate a claim for compensation. The landlord was informed that the landlords retain the right to do so within the two year time limit provided under the Act.

Analysis

As the parties were informed during the hearing, the landlord’s submissions regarding cleaning, damage and missing items were not issues for me to decide as the landlords had not filed an Application for Dispute Resolution seeking compensation for such things. The landlords remain at liberty to file an Application for damages within two years of the tenancy ending. The issues for me to determine by way of this decision are

whether either party extinguished their right to the security deposit; whether the landlords received the tenants' forwarding address in writing; whether the tenants provided written authorization or an Arbitrator previously provided the landlords with authorization to retain all or part of the security deposit; and, whether the landlords administered the security deposit in accordance with the Act. .

Section 23 of the Act provides that a landlord must prepare a move-in inspection report. There is no exemption from this requirement and a report must be completed regardless of the condition of the rental unit. Where a landlord fails to perform the move-in inspection report, section 24 of the Act provides that the landlord extinguishes their right to make a claim against the security deposit for damage to the rental unit. In this case, the landlords failed to complete a move-in inspection report and the landlord's right to make a claim against the security deposit for damage was extinguished at the start of this tenancy. I find there is no other evidence before me to suggest the tenants extinguished their right to return of the security deposit.

As for scheduling a move-out inspection, section 17 of the Residential Tenancy Regulations provide that the landlord is to make the first proposal to the tenant for one or more specific date(s) and time(s). Neither the Act nor the Regulations impose an obligation upon the tenant to make the first proposal to the landlord for a specific date and time for the move-out inspection. In this case, I find the landlords failed to propose a specific date and time for the move-out inspection and considering the landlords had ended the tenancy by way of 2 Month Notice to End Tenancy I find the landlords had ample opportunity to make such a proposal. Further, when the landlords attended the property for the preliminary inspection(s) and subsequently texted the tenants they had further opportunity to propose a specific date and time for the move-out inspection and they did not. Therefore, I hold the landlords responsible for failure to perform a move-out inspection together since they did not meet their obligation under section 17 of the Regulations.

As for administering the security deposit, section 38 of the Act provides the following requirements. Unless a landlord has a legal right to retain 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 it within 15 days from the day 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.

A landlord may achieve a legal right to retain all or part of the security deposit where the tenant has authorized the landlord to make deductions from the deposit in writing; an Arbitrator has authorized the landlord to make deductions from the deposit; or, there was extinguishment by the tenant. As provided already, I have found no evidence to suggest the tenants extinguished their right to the security deposit. Nor, did the tenants authorize the landlords to retain any part of their security deposit in writing and the landlords did not have an Arbitrator's prior authorization to retain all or part of the security deposit. Considering these circumstances and that the landlords received the tenant's forwarding address in writing on February 29, 2016 based upon the landlord's own testimony I find the landlords had until March 15, 2016 to either refund the security deposit or make a claim against it by filing an Application for Dispute Resolution in order to comply with the requirements of section 38(1) of the Act. Since the landlords failed to take appropriate action by March 15, 2016 I find the landlords failed to administer the security deposit in a manner that complies with section 38(1) of the Act and the landlords must now pay the tenants double the security deposit as provided under section 38(6) of the Act. Therefore, I award the tenants return of double their security deposit, or $2,400.00.

Given the tenants' success in this application I further award the tenants recovery of the $100.00 filing fee they paid for their application. Accordingly, I provide the tenants with a Monetary Order in the total amount of $2,500.00 to serve and enforce upon the landlords.

Conclusion

The tenants were successful in their application and have been provided a Monetary Order in the amount of $2,500.00 to serve and enforce upon the landlords.

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: August 19, 2016

Residential Tenancy Branch