Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit and pet damage deposit and recovery of NSF bank fees. The landlord did not appear at the hearing.

As to service of the hearing documents, the tenant submitted the following: On February 6, 2016 the tenant sent the hearing documents to the landlord's service address as provided on the tenancy agreement. That registered mail package was returned to sender with the notation that the recipient had moved. The tenant then contacted the landlord via text message on March 3, 2016 to inform the landlord she had sent him a registered letter and it was returned to her so she requested the landlord provide an address at which she could send the letter. The landlord responded via text message and provided the tenant with the address of the rental unit. The tenant re-sent the hearing documents to the landlord using the rental unit address on March 4, 2016. The registered mail package sent on March 4, 2016 was also returned to the tenant with a notation that the recipient had moved.

An Application for Dispute Resolution and other required documents are to be sent to the other party in accordance with section 89 of the Act. Where a tenant serves a landlord via registered mail the tenant is to use the landlord's address for doing business as a landlord. In this case, the tenant used the landlord's service address as provided on the tenancy agreement by the landlord and when that was unsuccessful the tenant used the rental unit address as this was the address the landlord advised her to use. Accordingly, I am satisfied the tenant met her burden to send the hearing documents to the landlord via registered mail using an address at which the landlord purported to carry on business as a landlord.

Section 90 of the Act deems a person to have received documents five days after mailing even if that person refuses to accept or pick up their mail.

In light of the above, I deemed the landlord to be in receipt of the tenant's hearing documents five days after mailing and I continued to hear the tenant's claims without the landlord present.

Issue(s) to be Decided

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

Background and Evidence

The tenancy started on April 10, 2015 and the tenant paid a security deposit of $700.00 and a pet damage deposit of $350.00. A move-in inspection report was prepared and the tenant was provided a copy of it.

The tenancy was set to end December 31, 2015 although the tenant vacated the rental unit earlier on December 18, 2015. The tenant submitted that the landlord and the tenant participated in a move-out inspection together on December 27, 2015 and the landlord prepared a move-out inspection report. The landlord also gave the tenant a cheque for a refund of the security deposit and pet damage deposit on that date. The tenant expected to get a copy of the move-out inspection report but the landlord did not provide it to her.

I noted that the refund cheque issued on December 27, 2015 was for the amount of $1,030.00 rather than the full amount of the deposits of $1,050.00. The tenant explained that she believes she was agreeable to a $20.00 deduction for dog feces that was left on the patio at the time of the move-out inspection but in the absence of a copy of the move-out inspection report she was not entirely sure. In any event the tenant was of the position that due to the landlord's failure to provide her with a copy of the move-out inspection report the landlord extinguished his right to make deductions.

The tenant deposited the refund cheque of $1,030.00 and it was dishonoured. When she contacted the landlord about the dishonoured cheque he stated that he put a stop payment on it, claiming that he returned to the rental unit on January 6, 2016 and determined there was an odour of pets and further mess. The tenant stated that she tried negotiating with the landlord; however, the parties could not reach an agreement.

The tenant stated that she believed she had given her forwarding address to the landlord at the time of the move-out inspection but in the absence of the move-out

inspection report she was not certain so she provided it to the landlord again by way of a letter she mailed to him on January 8, 2016. On January 15, 2016 the landlord sent the tenant a refund cheque in the amount of $820.00 along with a written statement explaining the deductions he made, including a deduction for $45.00 for dog feces on the patio, to the tenant's forwarding address. The tenant was not agreeable to the landlord's deductions and did not cash the cheque.

As for the tenant's claims for recovery of NSF fees, the tenant submitted that when the landlord's refund cheque of $1,030.00 was dishonoured her bank charged her a fee of $7.50. Then cheques she had written were dishonoured because the landlord's cheque was reversed from her bank account, costing her a further $45.00 in bank fees. I noted that in the landlord's written statement of January 15, 2016 he indicates that he was adding $45.00 to the amount refunded to the tenant for the "check stop".

As evidence for this proceeding, the tenant provided copies of: the tenancy agreement, pet agreement; receipt for payment of the security deposit and pet damage deposit in the amounts of $700.00 and $350.00 on April 6, 2015; the move-in inspection report; the dishonoured refund cheque in the amount of $1,030.00 and returned item advise received from her bank; pages of the tenant's bank statement for January 2016, a letter from the tenant to the landlord dated January 8, 2016 whereby she provides the landlord with her forwarding address; the landlord's written statement explaining deductions he has made from her deposits and the cheque for $820.00 dated January 15, 2016; the registered mail envelopes, including tracking numbers, used to serve the landlord with the hearing documents; and, the text message whereby the landlord provided a service address to the tenant on March 3, 2016.

Analysis

Unless a landlord has a legal right to retain all or part of the security deposit or pet damage deposit, section 38(1) of the Act provides that a landlord must either return the security deposit and/or pet damage 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 and/or pet damage deposit.

The landlord undoubtedly made deductions from the security deposit and/or pet damage deposit as evidence by his written statement and refund cheque of $820.00 dated January 15, 2016. However, I was not provided evidence to demonstrate the

tenant had authorized such deductions in writing or that the landlord obtained the prior authorization of an Arbitrator to make such deductions. Accordingly, I find the landlord made deductions from the deposits without the authorization to do so.

I was not provided any evidence to suggest the tenant extinguished her right to return of the security deposit and/or pet damage deposit having been provided evidence that she participated in the move-in and move-out inspections with the landlord. I am also satisfied that the tenant provided the landlord with a forwarding address in writing as evidenced by a copy of the letter she prepared on January 8, 2016 and the landlord using that address in sending a partial refund and written statement to the tenant on January 15, 2016.

Given the landlord was in possession of the tenant's forwarding address, but did not have the tenant's authorization to make deductions from the security deposit and/or pet deposit in the amounts he deducted on January 15, 2016 I find the landlord failed to comply with section 38(1) of the Act. Therefore, I find that section 38(6) applies and the landlord must now pay the tenant double the security deposit and pet damage deposit, or $2,100.00.

The tenant provided documentary evidence that she incurred a bank service fee of $7.50 due the landlord's first refund cheque being dishonoured and I award the tenant recovery of that fee. Further, it is apparent from the landlord's written statement of January 15, 2016 that he was agreeable to reimbursing the tenant $45.00 for the losses she incurred due to the stop payment on his first refund cheque. Therefore, I grant the tenant's request to recover $7.50 and $45.00 in bank fees from the landlord as requested.

Since the tenant was successful in this application, I award the tenant recovery of the $100.00 filing fee she paid for this application.

In light of all of the above, I provide the tenant with a Monetary Order in the amount total amount of $2,252.50 as requested.

Conclusion

The tenant has been provided a Monetary Order in the amount of $2,252.50 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: October 14, 2016

Residential Tenancy Branch