Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on March 21, 2016 for the return of her security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"). The Tenant appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Landlord during the 15 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 named Landlord with a copy of the Application and the Notice of Hearing documents to the address the Landlord had provided during the tenancy. This was done by registered mail on March 24, 2016. The Landlord 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. The Canada Post website shows that the Landlord received and signed for the documents on April 11, 2016. Therefore, I am satisfied that the Landlord named on the Application was served with the required documents pursuant to Section 89(1) (c) of the Act. The hearing continued with the undisputed evidence of the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to the doubling penalty provided by the Act due to the Landlord's failure to deal properly with the Tenant's security deposit?

Background and Evidence

The Tenant testified that this tenancy for a basement unit started on October 1, 2013 for a fixed term of one year after which time the tenancy continued on a month to month basis. The written tenancy agreement was between the Tenant and the owner of the

rental unit. Rent in the amount of $1,300.00 was payable on the first day of each month. The Tenant paid the owner a security deposit of $650.00 on September 6, 2013.

The Tenant testified that in August 2015, she was notified by the owner's daughter that the owner had passed away and that her daughter was the executrix of the owner's estate. The Tenant testified that the owner's daughter then instructed the Tenant to pay rent to the owner's estate account and provided the Tenant with the owner's daughter's mailing address. The Tenant testified that she then continued to pay rent to and deal with the owner's daughter as the Landlord for this tenancy. The Tenant provided email correspondence between her and the owner's daughter to verify this, who is herein referred to as the Landlord in this Decision.

The Tenant testified that on December 16, 2015 she emailed the Landlord informing her that she would be vacating the rental unit at the end of January 2016. In that same email, which was provided into evidence, the Tenant details her forwarding address for the return of her security deposit.

The Tenant testified that she vacated the rental unit on January 31, 2016 and completed a move-out condition inspection of the rental unit with the Landlord's husband. The Tenant testified that despite repeated emails to the Landlord requesting the return of her security deposit, the Landlord failed to return it to her and instead made false allegations that the Tenant had removed the Landlord's mother's personal possessions from the rental property. The Tenant provided this email correspondence into evidence.

The Tenant testified that after she made the Application on March 21, 2016, she received from the Landlord her $650.00 security deposit. However, the Tenant appeared for this hearing to claim the doubling penalty provided for by the Act and confirmed that she had given no written consent for the Landlord to keep her security deposit during the time limit provided by the Act.

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.

Section 2 of the Act defines a landlord as the heirs, assigns, personal representative or successors in title to an owner of the rental unit. Therefore, I find that the Landlord is the correct named party in this dispute and was obligated to dispense with the Tenant's security deposit pursuant to the Act.

While service of documents by email is not one of the permitted ways of service under the Act, a party may rely on evidence to show that communication between parties took place and was served and received pursuant to Section 71(2) (b) of the Act. In this case, I accept the Tenant's testimony and documentary evidence that the Landlord and Tenant communicated by email in this tenancy.

Accordingly, I accept the undisputed evidence that this tenancy ended on January 31, 2016 through the Tenant's December 17, 2015 email and that this is when the Tenant served the Landlord with her forwarding address. Therefore, I find the Landlord would have had until February 15, 2016 to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the tenancy ending or obtained written consent from the Tenant to keep it. Rather, the evidence points to the Landlord returning the Tenant's security deposit after the time limit to do so had expired. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord took on the obligation to deal with this tenancy in accordance with 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 had no 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 $1,300.00. As the Landlord has returned $650.00 back to the Tenant, this award is accordingly reduced to $650.00 for which amount the Tenant is issued with a Monetary Order. This order must be served on the Landlord. The Tenant may then file

and enforce the order in the Small Claims Court 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 the doubling penalty provided for by the Act in the amount of $650.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 31, 2016

Residential Tenancy Branch