



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANTERN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on July 15, 2016 for the return of her security deposit and to recover the filing fee.

The Director of the company Landlord (the “Landlord”) named on the Tenant’s Application, and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application by registered mail and her three pages of email evidence. The Tenant confirmed receipt of the Landlord’s 14 pages of documentary evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present relevant evidence, make submissions to me, and cross examine the other party on the evidence provided. However, while I have considered all the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make findings in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this tenancy started on July 1, 2015 for a fixed term of one year due to end on July 1, 2016; after this time period the tenancy agreement allowed the tenancy to continue on a month to month basis thereafter. Rent was payable by the

Tenant in the amount of \$995.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00 on June 3, 2015 which the Landlord still retains. The Tenant testified that she ended the tenancy by sending an email on or around May 9, 2016 to the Landlord's agent informing him that she would be vacating the rental unit at the end of May 2016. The Tenant stated that she provided the Landlord with her forwarding address in writing by letter on May 17, 2016 for the return of her security deposit but the Landlord has since failed to return it.

The Landlord testified that the Tenant was informed by email that she was not allowed to end the tenancy as she had to give one full rental months of notice to end the tenancy and would therefore be held liable for June 2016 rent if she vacated at the end of the month. The Landlord testified that he informed the Tenant that he would allow her to end the tenancy earlier if she gave permission to keep her security deposit in lieu of lost rent. The Landlord testified that the Tenant consented to this by email. However, that email evidence was not before me.

The Landlord then referred to the move-in and move-out Condition Inspection Report (the "CIR") in which the Tenant had signed the move-out portion agreeing to the condition of the rental unit on May 25, 2016 and signed the "SECURITY DEPOSIT STATEMENT" section at the bottom of the document. That section contained the Tenant's signature agreeing to allow the Landlord to make a deduction of \$500.00 from the security deposit. The Landlord submitted therefore, he had no obligation to return the Tenant's security deposit.

The Tenant denied that she had consented to allow the Landlord to keep her security deposit by email stating that this evidence was not made available for this hearing. The Tenant testified that she only agreed to the Landlord keeping her security deposit on the proviso that the Landlord was unable to re-rent the rental unit for June 2016. The Tenant testified that the Landlord did rent out the rental unit for June 2016 and therefore suffered no loss.

When the Tenant was asked about her signature on the move-out CIR agreeing to the Landlord keeping her security deposit, the Tenant stated that she was under duress when she signed this document and therefore this was void. The Tenant submitted that she was being slapped around by the building manager at the time of the move-out CIR and was forced into signing the document. The Landlord disputed this oral testimony.

Analysis

Section 38(4) (a) of the *Residential Tenancy Act* (the “Act”) provides that a landlord may retain an amount from a security deposit if after the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay for a liability or obligation of the tenant. Section 45(2) of the Act prevents a tenant from ending a fixed term tenancy and the Tenant is bound and liable to the fixed term period unless the tenant has authority under the Act to end the fixed term prematurely.

In this case, I am satisfied the Tenant consented to the Landlord in writing to keep the Tenant’s \$500.00 security deposit. I find that the move-out CIR is sufficient evidence to show that the Tenant’s written consent complied with the requirements of the Act and this allowed the Landlord to retain her security deposit.

I find the Tenant’s disputed testimony that she was forced under duress to sign the move-out CIR is insufficient and unsubstantiated to prove this claim. I find the evidence before me is that the Tenant had no obligation to sign the move-out CIR and was under obligation to read and understand the document before she signed to it. As a result, I find the Landlord had no requirement to make an Application to keep the Tenant’s security deposit or return it to her at the end of the tenancy.

Conclusion

The Landlord dealt with the Tenant’s security deposit in accordance with the Act. Therefore, the Tenant’s Application is dismissed without leave to re-apply. 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: January 19, 2017

Residential Tenancy Branch