Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. A monetary order in the sum of $3100 for double the security deposit.
b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the respondents by mailing, by registered mail to where the respondents carry on business on February 6, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties failed to provide a copy of the tenancy agreement. However, they agreed that the written tenancy agreement identified the corporate respondent as the landlord and the applicant and another person as the tenants.

The written tenancy agreement was for a one year fixed term starting October 1, 2015 and ending on October 31, 2016. The tenant testified the rent was $3100 per moved. She further testified she paid a security deposit of $1650. However, her claim is for double the security deposit totaling $3100. The Condition Inspection report indicates the security deposit was 1550. I determined the actual security deposit paid was $1550.

The tenant was accused of operating an airbnb and the landlord was facing fines by the strata council. The tenancy ended on April 30, 2016. The parties conducted a Condition Inspection on that date.

On May 2, 2016 the landlord filed an Application for Dispute Resolution. The landlord in that Application was identified as the owner and the corporate respondent. The hearing was held on November 3, 2016. The tenant did not appear. The owner and the individual respondent appeared. The arbitrator dismissed the claim with liberty to re-apply on the basis the landlord failed to prove the hearing package was properly served on the Tenant.

The tenant filed an Application for Dispute Resolution on June 15, 2016 for double the deposit. She identified the owner only in that application as the landlord. That hearing was held on December 7, 2016. The owner did not appear. The decision letter states that the tenant requested and was given liberty to withdraw her application. The tenant testified the arbitrator in that hearing told her that as the owner was not named in the tenancy agreement that she failed to claim against the correct party.

The individual respondent testified the corporate respondent initially acted as an agent for the owner in the rental of this unit. However, they found that they were in a conflict of interest acting for the individual owner and the strata counsel. The individual respondent produced a letter from the corporate respondent to the owner dated March 29, 2016 that stated they were giving the owner 60 days terminating there management agreement effective May 30, 2016.

The individual respondent testified that the owner was upset with the problems he was having with this tenant. As a result he sold the rental property.

The tenancy ended on April 30, 2016.

It is unclear exactly when the tenant provided the landlord with her forwarding address in writing. The representative of the landlord testified she received it within a week or two after the end of tenancy on April 30, 2016. However, this address was on the Application filed by the owner and the corporate respondent on May 2, 2016. I

determined the tenant had provided the respondents with her forwarding address by May 10, 2016.

The representative of the landlord submits the tenant has claimed against the wrong party and she should be claiming against the owner only. She testified the corporate respondent terminated their representation of the owner and has returned all monies which they held on behalf of the owner. Further, the owner has sold the rental unit. The individual respondent acknowledged the Strata Council did not fine the landlord.

The tenant testified she did not receive any notice that the corporate respondent was not acting for the owner. The respondent acknowledged that she did not give the tenant notice in writing that the tenant that the corporate entity was not acting for the owner only. .

After carefully considering all of the evidence I determined the tenant was entitled to consider the corporate respondent as the landlord for the following reasons:

- Neither party produced a copy of the tenancy agreement. However, based on the oral evidence presented at the hearing the corporate respondent was named as the landlord in the tenancy agreement. I infer from the evidence that the owner was not named and did not sign the tenancy agreement. It was open for the respondent to identify the owner of the property as the landlord with them as the agent. Where the agent identifies itself as the landlord and do not indicate they are acting as an agent they must take the responsibility of a landlord under the Act.
- The agent failed to advise the tenant they were terminating their relationship with the owner.
- The agent for the landlord conducted the Condition Inspection along with the Tenant on April 30, 2016 when the tenancy came to an end.
- On that date, the corporate respondent was acting for the landlord as the termination was not effective until the end of May 2016.
- The corporate respondent and the owner were named as landlords in the landlord's Application for Dispute Resolution which filed in early May. That hearing was heard on heard on November 3, 2016. The individual respondent appeared along with the owner at that hearing.
- The definition of "landlord" in the Residential Tenancy Act provides as follows:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

Thus even if the corporate respondent is seen as an agent of the owner, the definition of "landlord" under the Residential Tenancy Act is broad enough to include the owner's agent.

- The individual respondent testified the Strata Council did not fine the tenant. Thus, based on that evidence there does not appear to any basis for the landlord to retain the security deposit.

In summary I determined the corporate respondent was correctly identified as a landlord in this application. However, I dismissed the claim against the individual respondent as it is clear she was an agent only.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of $1550 at the start of the tenancy. I determined the tenancy ended on April 30, 2016. I further determined the tenant provided the landlord with their forwarding address in writing prior to May 10, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. The landlord's Application for Dispute

Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of $3100.

Monetary Order and Cost of Filing fee

I ordered the corporate respondent to pay to the tenant the sum of $3100 plus the sum of $100 in respect of the filing fee for a total of $3200.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the corporate respondent to pay to the tenant the sum of $3200.

This decision is final and binding on both parties.

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: March 11, 2017

Residential Tenancy Branch