



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for an Order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by her agent, DR (the "tenant") who confirmed he had full authority to speak on her behalf at this hearing.

As both parties were in attendance I confirmed that there was no issue with service. The parties confirmed that the landlord received the tenant's dispute resolution package and that both parties were served their respective evidentiary materials. In accordance with sections 88 and 89 of the Act, I find that landlord was duly served with the tenant's application package and the parties were served with the respective evidence.

Issue(s) to be Decided

Is the landlord in breach of the Act, regulation or tenancy agreement by failing to return the security deposit to the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2015 and ended on November 30, 2016. The monthly rent at the end of the tenancy was \$850.00. A security deposit of \$425.00 was paid by the tenant at the start of the tenancy.

The parties participated in a condition inspection report at the start and end of the tenancy. The move-out condition inspection report was prepared on December 6, 2016. The condition inspection report lists under damage to the rental unit, carpet cleaning,

stove cleaning, and replacement of lightbulbs. The condition inspection report is signed by the tenant but the parties disagree as to whether the tenant first signed and later disputed the report or whether the tenant initially disputed the landlord's deduction but later consented and signed.

The landlord testified that in accordance with the condition inspection report she deducted the amount of \$90.49 and issued a cheque in the amount of \$334.51 on December 21, 2016 to the tenant. The landlord said that she mailed the cheque to the forwarding address provided on the condition inspection report. The landlord said that the cheque was subsequently returned by the postal service as undeliverable. The landlord testified that she attempted to contact the tenant to arrange for the return of the security deposit but the tenant failed to follow up. The landlord testified that the security deposit cheque remains available should the tenant wish to pick up the cheque or provide a self-addressed envelope with a correct forwarding address.

The tenant testified that the forwarding address was provided in writing to the landlord on multiple occasions. In the written evidence he showed that a forwarding address was provided on November 30, 2016, December 6, 2016 and December 27, 2016. He said that the landlord ought to have known that in the municipality where the tenant resides, home mail delivery service is not available and that mail must be sent to a post office box. The tenant claims for the full amount of the security deposit of \$425.00, the \$100.00 cost of the filing fee for this application and the \$10.50 cost of serving the application on the tenant.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenant gave written consent that the landlord may keep a portion of the security deposit in the condition inspection report prepared at the end of the tenancy. In reviewing the report I find the landlord's interpretation that the tenant initially disagreed but subsequently consented to the assessment of damages to be more credible for the following reasons. In section 1 the tenant wrote "normal wear and tear" but crossed that out. If she disagreed with the assessment it is reasonable to expect that she would not have retracted the objection by crossing out the reason for disagreeing with the assessment. In section 2 it appears that the tenant initially wrote that she does not

agree but crossed that out and printed her name. The section contains the tenant's signature and consent to the deductions to the security deposit as listed in an earlier section. The tenant also wrote in her Monetary Order Worksheet a deduction of \$75.00 for "agreed upon price on move out inspection". I find that the tenant provided written consent that the landlord may retain a portion of the security deposit of \$50.00 for carpet cleaning, \$25.00 for stove cleaning and an unspecified amount for the replacement of lightbulbs. I accept the receipt submitted by the landlord into written evidence showing that the cost of the lightbulbs was \$15.49. Therefore, I accept the landlord's evidence that the balance of the security deposit to be returned to the tenant is \$334.51.

I find that the tenant provided her forwarding address to the landlord on the condition inspection report prepared at move-out. I note that the address provided differs from that provided in the letter dated November 30, 2016 and the subsequent letter dated December 27, 2016. I accept the landlord's evidence that she issued the security deposit to the address provided on the condition inspection report prepared on December 6, 2016. I also accept the landlord's evidence that she did not receive the forwarding address provided in the December 27, 2016 letter until after she had already issued the security deposit return.

While I accept the evidence of the tenant that the postal service in the tenant's municipality does not offer door delivery service I find that it is not the landlord's duty to investigate beyond the forwarding address provided by the tenant. The landlord was provided a forwarding address on December 6, 2016 and because it was provided after the letter of November 30, 2016, issued the security deposit to that address. I find that the landlord fulfilled her duty under the *Act* by issuing the security deposit to the forwarding address provided by the tenant. If the tenant provided incomplete or incorrect information I find that it is not the landlord's duty to take investigative steps to locate the tenant.

I accept the landlord's evidence that she received another forwarding address in the letter dated December 27, 2016 and that she attempted to contact the tenant to arrange for a return of the security deposit. I accept the evidence of the landlord that the security deposit remains available should the tenant attend at the landlord's address to pick it up or provide the landlord with a correctly addressed stamped envelope for the landlord to mail. I find that the landlord has taken appropriate measures to attempt to return the deposit to the tenant. Therefore, I decline to issue an order that the landlord comply with the *Act*, regulations or tenancy agreement when there is insufficient evidence that the landlord is in breach.

As the tenant's application was not successful, the tenant is not entitled to recover the filing fee for this application or the cost of registered mail from the landlord.

Conclusion

The tenant's application is dismissed.

As the landlord stated during the hearing the tenant is at liberty to provide an addressed stamped envelope to the landlord or arrange to pick up the cheque for the remaining security deposit.

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: April 27, 2017

Residential Tenancy Branch