Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on November 17, 2016 for the return of their security deposit and to recover the filing fee from the Landlords.

Both Tenants appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Landlords during the 20 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenants.

The Tenants testified that they served the Landlords with a copy of the Application and the Hearing Package to the Landlords' service address which they testified was detailed on the signed tenancy agreement. The Tenants explained that they rented the basement suite of a residential home, in which the Landlords resided in the upstairs portion. This was the same address used by the Tenants to serve the Landlord with the documents for this hearing.

The Tenants provided the Canada Post tracking number to verify service by registered mail to the Landlords on November 19, 2016. The Tenants testified that the documents were returned back to them as unclaimed. The Tenants testified that it did come to their attention that the upper portion of the rental home the Landlords were residing in had been vacated by the Landlords after their tenancy had ended, but the renters occupying the upper rental portion the Landlords were residing in confirmed that the Landlords were coming back and forth to the upper portion to collect mail.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenants, I find the Landlords were deemed served on November 24,

2016 pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenants as follows.

Issue(s) to be Decided

Are the Tenants entitled to double the return of their security deposit?

Background and Evidence

The Tenants testified that this tenancy started on September 16, 2015 for a fixed term of one year due to end on September 15, 2016. The Tenants signed a tenancy agreement which required $1,300.00 payable on the first day of each month. The Tenants paid the Landlords a security deposit of $650.00 at the start of the tenancy which the Landlords still retain in trust.

The Tenants testified that in May 2016 they were served with a notice to end tenancy for cause which had a vacancy date of June 30, 2016. The Tenants did not dispute the notice to end tenancy and moved out of the rental unit pursuant to it.

The Tenants testified that following the ending of the tenancy, a move out condition inspection report was scheduled and completed on July 12, 2016. At this point the Tenants provided the Landlords with their forwarding address on a piece of paper.

However, after hearing nothing back from the Landlords, the Tenants sent the male Landlord an email on August 18, 2016 referencing the fact that the Landlords were provided with a forwarding address in writing on July 12, 2016 and that the email again confirmed the Tenants' forwarding address.

The Tenants testified that while they did not get a reply to their August 18, 2016 email, they did hear back from the male Landlord by email on November 4, 2016. This email was submitted into evidence and states that the Landlords had sent the Tenants some documents on July 17, 2016 which detailed that Tenants' security deposit was being applied to unpaid rent and utilities as well as failing to return the keys to the rental unit and damages within.

The Tenants confirmed that they did not give any written authority to the Landlords to withhold or make deductions from their security deposit. Therefore, the Tenants now seek to claim double the amount back of $1,300.00 because the Landlords failed to deal properly with their security deposit.

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. A landlord cannot make a unilateral decision to keep a tenant's security deposit.

I accept the undisputed evidence that this tenancy ended on June 30, 2016 through the notice to end tenancy. I also accept the Tenants provided the Landlords with a forwarding address during the move-out inspection conducted on July 12, 2016.

There is also sufficient evidence before me that the Landlords were sent the Tenants' same forwarding address by email on August 18, 2016. This is based on the fact that the male Landlord used the same email address, which the Tenants had used to communicate with the Landlords, informing them that the Landlords were offsetting the Tenants' security deposit against alleged breaches of the Act.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlords. 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, even if they are in possession of sufficient evidence to prove breaches by the tenant.

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.

There is no evidence before me the Landlords made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I must find the Landlords failed to comply with Sections 38(1) and 38(4) (a) of the Act.

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 security deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of $1,300.00.

As the Tenants have been successful in this matter, I also allow the Tenants to recover the $100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenants are issued with a Monetary Order for $1,400.00.

This order must be served on the Landlords. The Tenants may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if the Landlords fail to make payment. Copies of the order are attached to the Tenants' copy of this Decision.

Conclusion

The Landlords have breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants are granted a Monetary Order of $1,400.00 for double the amount back plus their filing fee.

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: May 16, 2017

Residential Tenancy Branch