Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant filed March 14, 2017 under the *Residential Tenancy Act* (the "Act") for return of the security deposit.

The landlord was represented by two property managers at the hearing. The tenant also attended. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and had the opportunity to present their evidence orally and in written and documentary form, to make submissions to me and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue. The landlord had sent responsive evidence to the tenant by registered mail, and a receipt establishing this was in evidence. However, the tenant stated that she had not received a notice of registered mail. Although reference was made to these materials at the hearing and although they factor into this decision, the tenant has not been prejudiced by this as this decision is in her favour. I also note that the landlord's evidence consisted largely of materials that the tenant already had in her possession.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

It was agreed that this tenancy began on September 1, 2016 for a term ending February 28, 2017. Rent was $1,000.00 monthly payable on the first each month. A security deposit of $500.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

A condition inspection was conducted and a report was completed by both parties at move-in. However, the parties did not cooperate to conduct a condition inspection and complete a report at move-out.

The landlord argued that it met its obligations under the Act to coordinate a move-out inspection and report with the tenant. The landlord further argued that because the tenant had not met her obligations in this regard she had extinguished her right to return of the security deposit.

On January 26, 2017 the landlord sent the tenant a letter confirming its understanding that the tenant would be vacating by February 28 at 1:00 pm. That letter also stated as follows: "In regards to the security deposit it will be mailed to you within 15 days of your move-out date. If there are damages . . . they will be deducted from your security deposit." The letter also noted that cleaning would be deducted from the deposit.

The letter attached a check list setting out the landlord's expectation for the state of the unit at move-out. At the bottom of checklist there is the following: "Vacating time according to the tenancy agreement is 1:00 pm on the last day of the month. Please advise our office of your date and time of departure so that we can coordinate a scheduled time to complete a move-out inspection . . . "

The landlord stated that the tenant did not respond to this letter to coordinate a move out inspection and that she vacated on February 26, 2017. It appears the landlord was expecting the tenant to vacate on February 28, 2017.

It was agreed that the office in the rental unit building was not always staffed, and on the day that the tenant vacated she left the keys with a note that included her forwarding address and phone number. The landlord stated that the head office (available via phone) was open regular business hours.

One of the property managers stated that she found the note when she attended at the building office on February 28, 2017. That manager also said that the tenant had attended at the office on another day before February 26, and that if she had advised that she would be vacating early, an earlier inspection could have been arranged.

The managers appeared to say that one of them suggested that February 28 would be an appropriate date. The landlord does not appear to have suggested this in writing and does not appear to have suggested a specific time.

One of the managers testified that on unspecified dates and times she attempted to contact the tenant by phone but that she did not receive an answer. They then sent a letter dated March 8, 2017 to her forwarding address. That letter, which was in evidence, included the following:

> This letter is to offer you a second chance to do suite inspection . . .
> You vacated the unit on February 26 and left the keys for the landlord. The landlord had provided you with a date of February 28 to do suite inspection but you had moved at an earlier date.
>
> The tenant is required to be present at the time of the suite inspection in order to receive the security deposit refund. This is a second opportunity to do suite inspection on March 15th at 1:00 p.m. in order for you to receive security deposit refund, otherwise you would have forfeited any amount of Security Deposit. [Reproduced as written]

The tenant testified that she called the office and advised one of the managers that she would be leaving on the 26th and that she was simply told that they would not return the security deposit without an inspection.

The tenant testified that she vacated the unit on February 26, 2017 as that was the date most convenient for her to move her belongings. The rental unit was on the mainland and the tenant relocated to Vancouver Island. The tenant further testified that she received the March 8 letter on March 14 at 3:00 pm and that she called the office to advise that she could not attend the following day. The tenant said that the property managers advised that the unit was undergoing some work and that if she could not attend on March 15 then it would be too late.

The property manager involved in this conversation said that she told the tenant that the tenant could send an agent or could arrange another time in the relatively near future because work was required in the unit in advance of April 1.

The landlord's obligations are set out in s. 9(d) of the tenancy agreement as follows:

> The landlord agrees to give the tenant at least two chances to participate in both the beginning and ending condition inspections at reasonable times. The tenant agrees to participate in the inspections if given those chances. . .

The tenant has not agreed that the landlord may retain the security deposit and the landlord has not applied for authorization to retain it.

Analysis

Section 35 of the Act requires that the landlord and the tenant together inspect the condition of the rental unit before a new tenant begins to occupy it (a) on or after the day the tenant ceases to occupy the unit or (b) on another mutually agreed day.

Section 35(2) requires the landlord to offer the tenant at least two opportunities, as prescribed by the Regulation, for inspection. Section 17(1) of the Regulation requires that the landlord offer the first opportunity by proposing one or more dates and times.

Section 17(2) of the Regulation requires that the landlord's second notice be in the prescribed form.

The landlord's obligations are also set out as well in s. 9(d) of the tenancy agreement, where the landlord commits to giving the tenant two chances to participate in the inspections and the tenant agrees to participate "if given those chances."

Based on the testimony and the evidence outlined above, I find that the landlord did not meet its obligations under the Act and Regulation or the tenancy agreement. The landlord's first letter to the tenant does not contain any specific proposal as to date and time. Instead, at the bottom of the second page, it invites the tenant to be in touch. Although the landlord's March 8 letter suggests that the landlord had provided the tenant with a first date of February 28 for the inspection, this was not substantiated by the landlord's testimony or documentary evidence. Nor did either of the property managers say that a specific time on February 28 had been suggested.

Additionally, the March 8 letter is not in the approved form.

Both landlord and tenant are also required by s. 17(3) of the Regulation to consider any reasonable time limitations of the other that are known and that affect the party's availability. The landlord was aware that the tenant had relocated away from the mainland and I find that the landlord was not considering this when it suggested a last opportunity for inspection by letter sent by Canada Post for a date a week after the date the letter was written.

Although the Act and the Regulation also require the tenant to cooperate in coordinating an inspection, the landlord is responsible to take the first steps. This makes sense in light of the fact that it is the landlord who is in charge of the rental business.

Section 36(1) states that the right of the tenant to return of the security deposit is extinguished if the landlord has complied with s. 35(2) and the tenant has not participated on either of the opportunities offered. Here the landlord has not complied with s. 35(2) and the tenant's right to the security deposit has therefore not been extinguished.

The Act contains comprehensive provisions dealing with security deposits. Section 38 requires that the landlord handle the security deposit as follows:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> **...**
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> > (a) may not make a claim against the security deposit or any pet damage deposit, and
> >
> > (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
>
> (Emphasis added)

This landlord has not applied to retain the deposit or secured the tenant's written permission to retain it. Accordingly, the landlord is in breach of s. 38 of the Act.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenant the total sum of **$1,000.00**, comprised of double the security deposit (2 x $500.00).

The landlord may still file an application for damage to the rental unit. However, the issue of the security deposit has been conclusively dealt with in this hearing.

Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: June 5, 2017

Residential Tenancy Branch