Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 228 CHATEAU BOULEVARD LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord did not attend this hearing, which lasted approximately 35 minutes. The two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing, the tenants confirmed that they attended a "previous hearing" on September 8, 2016, after which a decision of the same date was issued by a different Arbitrator. The file number for that matter is referenced on the front page of this decision. The tenants filed an application for dispute resolution requesting the same relief as in this current application. Both the individual landlord and the two tenants attended the previous hearing. The Arbitrator dismissed the tenants' application with leave to reapply because the tenants named the personal landlord, who is the director of the landlord company, rather than the landlord company named in the parties written tenancy agreement and the landlord was not property served. All parties confirmed the proper landlord company name and service address during the previous hearing and this information was contained in the Arbitrator's previous decision, which the tenants referenced during this hearing.

I find that I have jurisdiction to hear this matter because the tenants are within the two-year limitation date to file their claim after the end of this tenancy and they had leave to reapply from the previous decision. The tenants' current application was filed on January 5, 2017 and their tenancy ended on April 30, 2015. The tenants also named the correct landlord company as a respondent party in this current application, as referenced in the previous decision.

The tenants testified that they served the landlord with a copy of their application for dispute resolution hearing package on January 9, 2017, by way of registered mail. They claimed that they mailed it to the landlord company and address confirmed during the previous hearing on the Arbitrator's previous decision. The address is an international business address located in Australia. The tenants provided a Canada Post receipt, tracking number and printout from the Canada Post website indicating that the mail was returned to sender because it was unclaimed. The tenants also provided the original envelope which they used to mail the application, containing the landlord company's name and address, which indicates the package was "unclaimed" and "return to sender." In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on January 14, 2017, five days after its registered mailing.

Issue to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the two tenants, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenants testified regarding the following facts. This tenancy began on October 1, 2014 and ended on April 30, 2015. Monthly rent in the amount of $1,745.00 plus an additional $83.00 for hydro and $67.00 for internet, totaling $1,895.00, were all payable to the landlord on the first day of each month. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants confirmed that their tenancy agreement was for a fixed term from October 1, 2014 to May 31, 2015, after which they were required to vacate the rental unit.

The tenants stated that a security deposit of $1,745.00 was paid by them and the landlord returned this deposit in full after the end of the tenancy. The tenants claimed that while the landlord believed the return of the deposit was a “cash settlement” of all issues including their monetary claim in this application, they did not agree to this in writing and they accepted the deposit back only because they were entitled to its return, after speaking to the information officers at the Residential Tenancy Branch. They stated that they did not settle this current application by accepting the security deposit that they were legally entitled to as per the *Act*.

In addition to the security deposit of $1,745.00, the tenants claimed that the landlord required them to pay first and last month’s rent, utility and hydro charges. This information is contained in the parties’ written tenancy agreement. The tenants explained that they paid the landlord $5,535.00 total before they moved into the rental unit, which accounts for the $1,745.00 security deposit, first month charges of $1,895.00 and last month charges of $1,895.00. The tenants provided emails between themselves and the landlord confirming the above payment.

The tenants seek a monetary order of $1,895.00 from the landlord. The tenants claim that they are entitled to the return of their last month’s rent, internet and hydro charges totaling $1,895.00 because they did not live in the rental unit during May 2015, the last month of their fixed term tenancy. They said that the landlord illegally collected the above amount as a deposit at the outset of the tenancy, when he was not entitled to do so.

The tenants stated that they vacated the rental unit one month early on April 30, 2015, prior to the end of the fixed term on May 31, 2015. They said that the landlord allowed them to do so, without them having to pay for last month’s rent, if they found suitable tenants to assume their tenancy agreement for the one month. They claimed that they posted an advertisement in a magazine, found two new tenants which the landlord approved, and these two tenants moved in to the rental unit. They stated that they did not know exactly when the new tenants moved in or when they began paying rent, but they believed that they moved in by May 1, 2015 and paid rent and other charges of $1,895.00 for that month to the landlord. The tenants said that the landlord is not entitled to double recovery of rent for May 2015 from the tenants and the new tenants.

The tenants provided emails between themselves and the landlord confirming that they found two new suitable tenants for the rental unit to assume their tenancy agreement

and that the landlord was waiting for these tenants to pay tenancy charges and sign the tenancy agreement before they moved in. The tenants provided an email to the landlord, dated April 30, indicating that they had vacated the rental unit that day, and another email to the landlord, dated May 2, indicating that the two new tenants informed them that they had "moved in the apartment since yesterday at 5:45" and they wanted their last month's rent back.

Analysis

Section 15 of the *Act* states that a landlord may require tenants to pay a security deposit as a condition or a term of entering into a tenancy agreement. Section 20 of the *Act* states that a landlord must not require or accept more than one security deposit in respect of a tenancy agreement. The *Act* does not allow the landlord to collect deposits outside of security and pet damage deposits. However, the landlord has collected last month's rent, internet and hydro charges as a deposit from the outset of the tenancy and has held it in trust. This information was contained in the parties' written tenancy agreement and referenced in emails between the parties. The tenants confirmed, in their undisputed testimony at the hearing, that the above events occurred.

I find that the landlord has illegally collected last month's rent, internet and hydro charges as a deposit from the tenants. Accordingly, I find that the tenants are entitled to the full return of this rent of $1,895.00 from the landlord, as this amount should not have been collected by the landlord.

I also find that by accepting a return of their security deposit of $1,745.00, which the tenants are entitled to pursuant to section 38 of the *Act*, this is not a full and final settlement of all issues including the tenants' monetary claim of $1,895.00 in this application. There was no written agreement to this effect, the emails between the parties indicate that it was not a settlement on the tenants' part, and the landlord cannot avoid or contract outside of the *Act* as per section 5 of the *Act*.

I also note that the landlord was not entitled to require and collect a security deposit from the tenants in excess of half a month's rent, pursuant to section 19 of the *Act*. The landlord required a full month's rent of $1,745.00 for the security deposit, as noted in his written tenancy agreement, and collected the above amount from the tenants, rather than the $872.50 that he was entitled to collect.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $1,895.00 against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 29, 2017

Residential Tenancy Branch