Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

At the commencement of the hearing I proceeded to confirm service of hearing documents upon each other. The tenant testified that he sent his hearing documents to the landlord via registered mail on March 24, 2017. The landlord had submitted a response to the Residential Tenancy Branch and testified that she sent it to the tenant via registered mail on July 7, 2017 using the service address that appears on the tenant's Application for Dispute Resolution. The landlord testified that the package she sent to the tenant was returned as "unclaimed" because the tenant's mail forwarding service expired. The tenant stated that his mail forwarding service did not expire and that the registered mail should not have been returned to sender. The landlord provided a copy of the registered mail envelope that was sent to the tenant and a print-out of the Canada Post webpage showing the registered mail was unclaimed despite leaving two notice cards for the tenant. I was satisfied that the landlord addressed the registered mail to the tenant using the address that appears on his Application for Dispute Resolution. Accordingly, I was satisfied the landlord met her obligation to serve her response to the tenant and I permitted the landlord's evidence to be admitted. However, considering the tenant had not seen the landlord's response or evidence, with a view to fairness, I informed the parties that if it were imperative for the tenant to see some or all of the landlord's evidence I would consider the options available for doing so as appropriate. After hearing from both parties, I found it unnecessary to order the landlord to re-serve evidence upon the tenant.

After both parties had an opportunity to be heard, I orally provided my preliminary findings to award the tenant double security deposit as requested. The landlord then stated that she had not received the Dispute Resolution Fact sheet with the hearing package the tenant served upon her. The tenant stated that he thought he had served it but that if not is was an oversight. I explored whether the landlord would be unduly prejudiced by not receiving the Fact Sheet.

During the hearing, I heard that the parties had participated in previous dispute resolution proceeding(s). The landlord had filed two previous Applications for Dispute Resolution against the tenant and the tenant had served the landlord with one previous Application for Dispute Resolution. As such, I am of the view the landlord has seen the Fact Sheets on multiple occasions.

The landlord argued that receiving the Fact Sheet may have helped her understand that she needed to file a cross application in order to pursue the tenant for losses she has suffered, such as damage and cleaning costs. I have considered this position thoroughly and I find as follows:

The Fact Sheet provides the following information with respect to making a cross application:

> **Making a cross-application**
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> If you are a respondent and you wish to make your own claim on the same issues as the application against you, you must file your own separate *Application for Dispute Resolution* **as soon as possible** and, in any event, in accordance with the Rules of Procedure. Your file is referred to as a cross-application.
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> When making a cross-application, write "cross-application" in the "Details of the Dispute" section on page two of the *Application for Dispute Resolution* **and** enter the other party's file number. If you are using the online application for dispute resolution, enter the other file number when prompted.
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> A cross-application will only be considered at the same hearing if it can be processed by the RTB and received by the other party not less than 14 days before the hearing (not including the date of service or the hearing date). The Rules require evidence to be submitted with the cross-application and served with the Hearing Package. The arbitrator may decline to hear unrelated issues on a party's application and may provide leave to re-apply for outstanding issues not dealt with at the hearing.
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> [My emphasis underlined]

Since the tenant applied for return of double the security deposit, the relevant issues to determine are: when the tenancy ended; when the tenant provided the landlord with a forwarding address in writing; whether the landlord refunded the security deposit to the tenant, or had written authorization to make deductions from the security deposit, or made a claim against the security deposit within the time limit for doing so; and, whether either party extinguished their right to the security deposit.

After hearing from the parties, and for reasons provided in the analysis section of this decision, I have found that the landlord extinguished the right to claim against the security deposit. As such the landlord may still pursue the tenant for compensation for losses such as damage or

cleaning but the landlord's ability to make a claim against the deposit has been extinguished. Accordingly, I am of the view that any claims the landlord may have against the tenant are not related to the security deposit. Therefore, I proceed to make a decision regarding the tenant's application for return of double the security deposit.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on October 1, 2015 and the tenant paid a security deposit of $425.00. The tenant gave a notice to end tenancy to the landlord in January 2017 to end the tenancy effective February 28, 2017. The tenant put a stop payment on the February 2017 rent cheque and on February 22, 2017 an Order of Possession and Monetary Order were provided to the landlord under the Direct Request procedure. The tenant sought review consideration of the decision and/or order(s) issued on February 22, 2017 and was unsuccessful. The landlord received the keys for the rental unit on February 27, 2017 in a registered letter the tenant sent her. On February 28, 2017 the landlord took possession of the rental unit. The Monetary Order issued to the landlord was subsequently satisfied at a payment hearing in a Small Claims court.

The tenant provided a forwarding address to the landlord in writing by way of registered mail sent on February 24, 2017 and the landlord received it on February 27, 2017. The landlord did not have the tenant's written authorization to make any deductions from the tenant's security deposit. The landlord did not refund the security deposit to the tenant and did not file an Application for Dispute Resolution to claim against it. The landlord stated that the tenant did not specifically request return of his security deposit when he sent his forwarding address to her. Nevertheless, on March 29, 2017 the landlord sent a letter to the tenant advising him she would not be returning the security deposit because damages associated to repairs and cleaning exceed the amount of the security deposit. The tenant did not respond to the letter.

The landlord acknowledged that she continues to hold the security deposit. The landlord stated that she has retained the security deposit because of cleaning, damage, garbage, mould and delayed restoration efforts at the rental unit. I did not permit the landlord to provide further evidence on these matters since the landlord has not made a claim for compensation against the tenant for these items. Rather, the landlord was informed that she still has the right to make an Application for Dispute Resolution to make such claims.

As for the move-in inspection report, an inspection was performed by both parties and a report generated; however, after the tenant indicated he did not agree with the landlord's assessment with respect to two areas, neither party signed the move-in inspection report.

As for a move-out inspection the landlord said that the tenant did not ask the landlord to do a move-out inspection. The landlord stated that she did not propose a date and time for the tenant to participate in a move-out inspection because he was a criminal and she feared for her safety. I did not hear further submissions on the criminal past of the tenant, if any, and I informed the landlord that if a landlord is fearful of the tenant the landlord may ask an agent to represent him/her at the move-out inspection or be accompanied by others if she is that fearful, otherwise the consequence for not proposing a move-out inspection to the tenant is extinguishment of the right to claim against the security deposit for damage.

Analysis

Under section 38(1) provides that, unless a landlord has a legal right to retain the security deposit, a landlord must either return the security deposit to the tenant, obtain the tenant's written consent to make deduction from it, or make an Application for Dispute Resolution to claim against it. The time limit to accomplish one of these things is within 15 days after the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) applies. Section 38(6) provides:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
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> [Reproduced as written with my emphasis underlined]

In this case, the landlord extinguished the right to make a claim against the security deposit for damage in failing to propose a date and time to the tenant to participate in a move-out inspection as provided under section 36(2) of the Act. Section 35(2) of the Act places the burden to propose a date and time for a move-out inspection upon the landlord, not the tenant.

Based upon the evidence before me, I am satisfied the landlords had been provided the tenant's forwarding address in writing on February 27, 2017. The tenant is merely required to give the landlord a forwarding address in writing, there is no requirement that the tenant specifically request that the address be used to send the security deposit as argued by the landlord. Despite receiving the tenant's forwarding address the landlord did not file an Application for Dispute Resolution, obtain the tenant's written consent to make deductions form the security deposit and did not refund the security deposit to the tenant within 15 days of receiving the forwarding address or the tenancy ending. Rather, she sent a letter to the tenant on March 29,

2017 which does not meet her obligation under section 38(1). Therefore, I find the landlord violated section 38(1) of the Act and the consequences of that are as provided under section 38(6) which are:

- The landlord must pay the tenant double the security deposit
- The landlord may not make a claim against the security deposit.

In light of the above, I grant the tenant's request for a Monetary Order in the amount of $850.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the amount of $850.00 to serve and enforce upon the tenant.

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: September 1, 2017

Residential Tenancy Branch