Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, SS

Introduction

This hearing was set to deal with monetary cross applications. 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

1. Naming of parties

The landlord had named the tenant's boyfriend as a named party to this dispute. The tenant's boyfriend was not identified as a tenant on the tenancy agreement. The landlord explained that she included the tenant's boyfriend as a named party because she could only find an address for the tenant's boyfriend when she filed her Application for Dispute Resolution and she hoped that by sending the hearing documents to the tenant's boyfriend the tenant would receive them. Since the tenant's boyfriend is was not a tenant he does not have an obligation to fulfill the Act, regulations or tenancy agreement to the landlord and I excluded him as a named party.

2. Service of Landlord's Application for Dispute Resolution

The landlord filed her application on March 16, 2017. The Residential Tenancy Branch attempted to contact the landlord on a number of occasions to address the landlord's indication she was seeking a Substituted Service Order; however, the landlord could not be reached until March 29, 2017. The hearing package was generated and sent to the landlord on March 29, 2017. On April 10, 2017 the landlord submitted an application for a Substituted Service order but subsequently cancelled the request. On April 10, 2017 the landlord sent the hearing package to the tenant using the tenant's forwarding address. The landlord explained that she did not receive a forwarding address for the

tenant until she received an email from the tenant dated April 7, 2017. The tenant stated the April 7, 2017 email was actually the second time she had provided the landlord with her forwarding address and that it had been sent to the landlord via registered mail on March 17, 2017 using the landlord's service address that appears on the move-out inspection report. The landlord explained that there was a delay in receiving the March 17, 2017 letter because the landlord would out of town at the time.

The hearing package sent to the tenant on April 10, 2017 indicated the landlord was seeking compensation of $15,850.00. The tenant received the hearing package on April 27, 2017. In the details of dispute box on the Landlord's Application for Dispute Resolution it appears the landlord seeks compensation for damage to the rental unit and cleaning; however, the landlord did not provide the tenant with a breakdown or Monetary Order Worksheet to show how she arrived at the sum of $15,850.00. Nor, did the landlord provide the tenant with any evidence with the hearing package sent on April 10, 2017.

The landlord sent a large evidence package to the tenant on or about August 9, 2017 along with a Monetary Order worksheet totalling $19,556.58. The Landlord's Application for Dispute Resolution was also included, showing a claim of $15,580.00 and an Amendment for was included but the Amendment for did not indicate the claim was being increased to $19,556.58. The tenant acknowledged receipt of this package on August 10, 2017.

Section 59 of the Act provides for the requirements for making and serving an Application for Dispute Resolution. An Application for Dispute Resolution must be served upon the other party within three days of making the Application for Dispute Resolution. Further, the Application for Dispute Resolution must contain full particulars and according to Rules 2.5 and 3.1 of the Rules of Procedure, that includes a detailed breakdown of the sum being claimed. The landlord did not serve her Application for Dispute Resolution or a detailed breakdown of the sum being claimed within three days of filing.

An applicant may amend their Application for Dispute Resolution in accordance with the Rules of Procedure. The Rules of Procedure require the applicant to serve the other party with an Amendment, separated from evidence, at least 14 days before the hearing. The landlord prepared an Amendment but did not indicate the amount claimed was being changed. Rather, the only indication that the landlord may be seeking to increase the claim was by way of a Monetary Order worksheet with an increased amount. However, the Amendment and the Monetary Order worksheet were not

separated from the evidence. Nor, were the Amendment, Monetary Order worksheet, and landlord's evidence received by the tenant at least 14 days before the scheduled hearing date. Since the hearing was scheduled for August 24, 2017 the latest date for the tenants to receive all of the landlord's documents was August 9, 2017 since the date of service and the date of the hearing are not counted in calculating the time limit. Mailing the documents on August 9, 2017 is not sufficient since this does not allow time for mailing. Therefore, I find the landlord failed to properly amend her application and failed to serve evidence to the tenant within the time limit for doing so.

The tenant submitted that the landlord's evidence package should be excluded pursuant to Rules 3.11 and 3.12 since the landlord delayed 4.5 months in serving a detailed breakdown of the claim and the landlord's evidence which left the tenant a very limited amount of time to provide a response to the landlord's evidence. Nevertheless, the tenant attempted to do so and sent her response to the landlord via registered mail on August 17, 2017.

The landlord was asked to provide a reason for the delay in serving the evidence to the tenant so close to the hearing date. The landlord submitted that the delay was due to the landlord's poor understanding of English and that approximately 100 pages of evidence had to be translated.

Considering the landlord did not serve the tenant with an Application for Dispute Resolution, including a detailed breakdown of the claim, within three days of filing; and, the landlord did not amend the Application or serve evidence in accordance with the Rules of Procedure, I decline to accept the landlord's Application. However, I am unsatisfied that there was a willful attempt to violate the time limits or abuse the dispute resolution process and I dismiss the landlord's Application for Dispute Resolution with leave to reapply. The landlord remains at liberty to file another Application for Dispute Resolution within two years of the tenancy ending.

3. Service of tenant's Application for Dispute Resolution

The tenants filed their Application for Dispute Resolution on April 4, 2017 and the hearing package and evidence was sent to the landlord via registered mail on April 6, 2017. Additional evidence was sent to the landlord on July 4, 2017 via registered mail. The landlord confirmed receipt of both of these packages. I was satisfied the tenants served the landlord with their Application for Dispute Resolution and evidence in a manner that complies with the Act and Rules of Procedure and I proceed to resolve the tenant's Application for Dispute Resolution.

Issue(s) to be decided

Are the tenants entitled to a Monetary Order for return of double the security deposit?

Background and Evidence

The tenancy started on February 1, 2015 for a fixed term of two years and then continued on a month to month basis. The rent of $3,500.00 was payable on the first day of every month. The landlord collected a security deposit of $3,500.00. The tenants recovered the over-paid portion of the security deposit by withholding $1,750.00 from rent payable for the month of February 2017 leaving the balance of $,1750.00 in trust for the security deposit.

The tenants testified that the tenancy ended on March 1, 2017. The landlord submitted that the tenants had not finished moving and cleaning and that possession of the rental unit was returned on March 2, 2017.

The landlord did not inspect the rental unit or prepare a move-in inspection report at the start of the tenancy. The landlord prepared a move-out inspection report without the tenants present. The parties provided consistent testimony that the tenants were not invited to participate in the move-out inspection with the landlord. The landlord emailed the tenants a copy of the move-out inspection report. The move-out inspection report contained a service address for the landlord.

The tenants did not give the landlord written authorization to make any deductions from the security deposit. The tenants sent a forwarding address to the landlord via registered mail on March 17, 2017 using the service address the landlord provided on the move-out inspection report. The landlord submitted that she left town on March 18, 2017 or March 19, 2017 until June 25, 2017. The landlord's daughter was eventually able to pick up the registered mail after the landlord provided photo identification to her daughter. A search of the registered mail tracking number shows that the registered mail was picked up by the landlord's daughter on April 6, 2017.

The landlord did not refund the security deposit to the tenants, but made a monetary claim against the tenant, including a claim against it by way of the Application filed on March 16, 2017 and mailed on April 10, 2017. For the reasons described earlier in this decision, the landlord's claims have been dismissed with leave to reapply.

Analysis

As provided under section 38(1) of the Act, unless a landlord has a legal right to retain the security deposit, a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from 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) provides that the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

A legal right to retain the security deposit is obtained by gaining the tenant's written consent to make deductions, obtaining the authorization of an Arbitrator, or where the tenant has extinguished the right to its return. The tenants did not authorize the landlord to make any deductions from the security deposit and the landlrod did not have the authorization of an Arbitrator to retain it. I was not provided any information to suggest the tenants extinguished their right to return of the security deposit; however, the landlord extinguished the right to make a claim against the security deposit for damage by failing to invite the tenants to participate in a move-in and move-out inspection with the landlord. The landlord did retain the right to claim against the security deposit for amounts other than damage, such as cleaning, rent or other damages or loss.

The tenant sent a forwarding address to the landlord via registered mail on March 17, 2017, which was picked up on April 6, 2017, and again by way of an email sent on April 7, 2017. The landlord did file an Application for Dispute Resolution to claim against the security deposit for damage and cleaning on March 16, 2017 and mailed the hearing package to the tenant on April 10, 2017. Although I have dismissed the landlord's Application, I find the landlord did make a claim against the security deposit earlier than 15 days after receiving the forwarding address and mailed it to the tenant within 15 days after receiving the forwarding address. Therefore, I deny the tenant's request for doubling of the security deposit.

Having dismissed the landlord's application, with leave, and considering the time limit for the landlord to make any claim against the security deposit has now lapsed, I order the landlord to return the single amount of the security deposit to the tenants without further delay. I further award the tenants recovery of the $100.00 filing fee they paid for their Application.

In light of the above, the tenants are provided s a Monetary Order in the amount of $1,850.00 to serve and enforce upon the landlord.

Conclusion

The landlord's application has been dismissed with leave to reapply.

The tenant's request for return of double the security deposit has been denied. Rather, I find the tenants entitled to return of the single amount of the security deposit, plus recovery of the filing fee paid by the tenants, for a total award of $1,850.00. The tenants are provided a Monetary Order in the amount of $1,850.00 to serve and enforce upon the landlord.

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 22, 2017

Residential Tenancy Branch