Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt 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.

At the outset of the hearing, I confirmed service of hearing documents upon each other and the Residential Tenancy Branch. I have admitted the documents submitted to me by both parties and considered them in making this decision.

It is important to note that during the hearing, the tenant had testified that she vacated the rental unit on July 5, 2016. The landlord confirmed that the tenant had vacated in July but stated it was July 14 that the landlord determined the tenant had vacated the rental unit. However, I did not make note of the landlord objecting to the year 2016 as being the year the tenant vacated the property. I orally provided the parties with my preliminary findings based on my understanding the tenant vacated the rental unit in July 2016. Upon further review of the documentary evidence after the teleconference call ended I find that it is highly likely that the tenant was mistaken as to the year she vacated the property and that the tenant actually vacated the rental unit in July **2017**. **As a result, this written decision provides for a different outcome than that I had orally communicated to the parties during the hearing. This written decision serves as the final and binding decision for the parties and replaces any oral findings I made during the hearing.**

Issue(s) to be Decided

Has the tenant established an entitlement to return of double the security deposit?

Background and Evidence

The tenancy for the subject rental unit started on February 1, 2016. A security deposit of $280.00 was transferred to the subject tenancy agreement from a previous tenancy agreement for another unit in the building. The tenancy agreement provides that the tenant was required to pay rent of $560.00 on the first day of every month. A Notice of Rent Increase dated November 25, 2016 indicates the rent was set to increase to $580.00 per month starting on March 1, 2017.

On June 2, 2017 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant failed to pay rent of $580.00 that was due on June 1, 2017.

The tenant went to the "rent bank" for a loan to pay the outstanding rent. The staff at the "rent bank" contacted the landlord on June 9, 2017. I heard that the "rent bank" issues loans to tenants at risk of losing their house due to unpaid rent and the cheque was issued with a view to assisting the tenant keep her housing.

On June 14, 2017 the landlord made an Application for Dispute Resolution by Direct Request seeking an Order of Possession and Monetary Order for unpaid rent. The "rent bank" issued a cheque to the landlord on June 16, 2017; however, the landlord held the cheque without cashing it since the landlord had already made an Application for Dispute Resolution by Direct Request. An Adjudicator granted the landlord's request for an Order of Possession and Monetary Order on June 26, 2017 and the orders were emailed to the landlord on June 27, 2017. The landlord posted the orders on the door of the rental unit on June 27, 2017. The tenant proceeded to vacate the rental unit; however, the parties were in dispute as to the exact date the tenant vacated.

The tenant testified that she had finished removing her possessions from the rental unit on July 5, 2016 and returned to the property on July 6, 2016 for the purpose of cleaning the rental unit; however, her keys no longer worked for the property. [Based on the documentation before me, I find it likely the tenant is mistaken in stating it was 2016 that she vacated the rental unit and that it was actually in July 2017 that she vacated.]

The landlord stated that the landlord entered the rental unit on July 7 after posting a notice of entry on July 5 and noticed there were still a few of the tenant's possession in the rental unit. The landlord entered the rental unit again on July 14 for purposes of pest control treatment and observed the rental unit appeared to have been vacated or

abandoned by the tenant. Without having a way to contact the tenant the landlord proceeded to perform a move-out inspection of the rental unit on July 15. The landlord testified that the locks to the property were changed in the later part of July. [The landlord did not specify the year in her testimony; however, based on the documentation before me, I find it likely it was in the year 2017].

The landlord testified that having received "the order" from the Residential Tenancy Branch, the landlord deposited the cheque received from the "rent bank" on July 18, 2017. I note that in the landlord's evidence package is a print-out of a ledger with an arrow pointing to rent deposits for the rental unit for the period of January 2017 through July 2017. The ledger appears to show that there were deposits for the rental unit for the months of January through May 2017, plus July 2017, but no payment deposited in the month of June 2017.

The tenant did not give the landlord written consent to retain the security deposit and the landlord did not refund the security deposit to the tenant. Nor, has the landlord filed an Application for Dispute Resolution against the tenant seeking monetary damages or loss except for the Application for Dispute Resolution by Direct Request filed in June 2017.

As for providing the landlord with a forwarding address, the tenant submitted that she attempted to provide it to the landlord multiple times, including two phone calls where the landlord hung up on her. I directed the tenant to describe how she provided the landlord with a forwarding address in writing. The tenant testified that she provided it by way of an email dated August 6, 2016. I noted that the tenant had not provided a copy of an email dated August 6, 2016 in her evidence package. Nor, was a copy in the landlord's evidence package. The tenant acknowledged that she failed to include a copy of the email in her evidence package. I asked the tenant whether the landlord had ever responded to her email of August 6, 2016 and the tenant testified that the landlord did not. The tenant was of the position that the landlord likely received the August 6, 2016 email because the tenant had emailed the landlord a resume in the past and the landlord had received that. [As noted previously, based on the documentation before me showing the tenancy ended in 2017, I assume the tenant meant to say an email was sent to the landlord on August 6, 2017.]

The landlord testified that a forwarding address was not received from the tenant by way of an email, or any other way until the landlord received the tenant's Application for Dispute Resolution.

The tenant confirmed that she did not attempt to serve the landlord with her forwarding address in writing at any other time, other than the email described above, before she filed her Application for Dispute Resolution on October 27, 2017.

The landlord testified that until receiving the tenant's Application for Dispute Resolution they had not received any documentation from the tenant after she vacated.

The tenant attempted to introduce other grievances she experienced during the tenancy; however, I did not permit the tenant to do so and instructed the parties that I would only hear issues relevant to the issue at hand which is the tenant's entitlement to return of double the security deposit.

Analysis

As provided in section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever date is later, to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution to claim against the deposit. If the landlord does not return the despite or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit pursuant to section 38(6) of the Act.

Section 39 of the Act imposes a time limit of one year for the tenant to provide a written forwarding address to the landlord. During the hearing, I informed the parties that I was unsatisfied that the tenant sufficiently proved that she had provided a forwarding address to the landlord, in writing, within one year of the tenancy ended based on the what I now believe to be erroneous testimony that the tenant vacated the rental unit in July 2016.

Documentation provided to me that indicates the tenant likely vacated the rental unit in July 2017 rather than July 2016 includes: the decision and orders issued by the Adjudicator on June 26, 2017 that references a 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2017; a Notice of Rent Increase issued to the tenant in November 2016; a document that shows the tenant was provided a new key for the unit on March 30, 2017; a move-out condition inspection report dated July 15, 2017; and Notices of Entry issued by the landlord for the rental unit in July 2017. Accordingly, I proceed to analyze the tenant's entitlement to return of the security deposit based on the finding the tenant vacated the rental unit in July 2017 and her assertion that she

sent an email to the landlord on August 6, 2017 rather than the year 2016 as she testified.

Where a tenant seeks return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

The tenant testified that she gave the landlord a forwarding address by way of an email, and as explained previously, I interpret the tenant's testimony to be an email dated August 6, 2017. The landlord denied receiving an email from the tenant with her forwarding address. The tenant confirmed that the landlord did not respond to the email the tenant alleges she sent. The tenant did not provide evidence to corroborate her position that the landlord received her email of August 6, 2017, if one was sent. Further, where a document is to be given to the other party, it is to be given in one of the ways permitted under section 88 of the Act. Section 88 of the Act does not recognize email as a permitted way to give a document. All of these things considered, I find the tenant did not meet her burden to prove that she provided the landlord with a forwarding address in writing prior to filing her Application for Dispute Resolution. Where a tenant does not provide the landlord with a forwarding address in writing prior to filing an Application for Dispute Resolution seeking return of the security deposit, the tenant's Application for Dispute Resolution is considered premature and it is typically dismissed with leave to reapply.

The tenant's Application for Dispute Resolution that was served upon the landlord by registered mail, which is a permissible method of service, contains a service address for the tenant; and, it was received by the landlord within one year of the tenancy ending. The tenant confirmed during the hearing that the address that appears on her Application for Dispute Resolution is an address at which she can receive documents. Accordingly, **I deem the landlord to be in receipt of a written forwarding address for the tenant upon receipt of this decision.**

Although the landlord may have suffered damages or loss as a result of this tenancy, the only Monetary Order obtained by the landlord with respect to this tenancy is the one issued for unpaid rent on June 26, 2017 and I find that Monetary Order was satisfied by depositing the cheque issued by the "rent bank" for June's rent. Since the landlord is still holding the tenant's security deposit; has a service address for the tenant on the Application for Dispute Resolution, I find the landlord must establish a basis for retaining the tenant's security deposit and I provide the following order to the landlord:

I order the landlord to:

> **Within 15 days of receiving this decision the landlord must comply with section 38(1) of the Act by either: refunding the security deposit to the tenant; obtaining the tenant's written consent to retain all or part of it; or, filing an Application for Dispute Resolution to make a claim against it.**

If the landlord fails to comply with the above order, the tenant is at liberty to file another Application for Dispute Resolution and seek return of double the security deposit.

Conclusion

The tenant's application has been found to be premature and it is dismissed with reapply.

The landlord is deemed to be in receipt of a forwarding address for the tenant, as it appears on the tenant's Application for Dispute Resolution, upon receipt of this decision.

I have issued an order to the landlord to take action with respect to the tenant's security deposit in a manner that complies with section 38(1) of the Act within 15 days of this decision.

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: May 31, 2018

Residential Tenancy Branch