Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 2, 2017 (the "Application"). The Tenant applied for a monetary order in the amount of $250.00 for the return of her security deposit. The Tenant also sought reimbursement for the filing fee.

Preliminary Issues

The Tenant appeared and provided affirmed testimony. Nobody appeared at the hearing for the Landlords.

I addressed service of the hearing package and evidence at the outset of the hearing. The Tenant testified that she sent a hearing package to each Landlord on October 8, 2017. She said she sent both packages by registered mail through Canada Post. She provided me with the address she used for Landlord A which was the same as the rental unit address. She said this was the residence of Landlord A and that she knew this because Landlord A lived in the upper suite of the rental address during her tenancy in the lower suite. She testified that Landlord A was living at the rental address when she moved out August 31, 2017.

The Tenant also provided me with the address she used for Landlord B. She said this was the residence of Landlord B. She testified that she knew this was the residence of Landlord B through an email from him when she moved in to the rental unit. She did not recall the details of this email. She said she checked that this was the address of

Landlord B in the white or yellow pages for the relevant city. She said she believed this information was up to date as of 2017 as she found it on the internet.

The Tenant provided me with two Canada Post tracking numbers which are indicated on the front page of this decision. With the Tenant's permission, I looked these tracking numbers up on the Canada Post website. The website shows that the first tracking number relates to a package sent October 8, 2017. It shows that it was sent from the city that the Tenant says she resides in. It shows that it was delivered in the city that the Tenant says Landlord A resides in. It indicates that the package was delivered and indicates a "signatory name" that is almost identical to Landlord A's name. The last name indicated has two letters that are different than Landlord A's last name. Given the uniqueness of Landlord A's first name, and how close the last name is, I am satisfied that the "signatory name" is Landlord A's name.

The Canada Post website shows that the second tracking number relates to a package sent October 8, 2017. It shows that it was sent from the city that the Tenant says she resides in. It shows that it was delivered in the city that the Tenant says Landlord B resides in. It indicates that the package was delivered and indicates a "signatory name" that is almost identical to Landlord B's name. The last name indicated has one letter that is different than Landlord B's last name. Given the uniqueness of Landlord B's first name, and how close the last name is, I am satisfied that the "signatory name" is Landlord B's name.

Upon a review of the evidence, I am satisfied that the Landlords were served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). I accept the undisputed testimony of the Tenant that she sent the hearing packages by registered mail to the addresses provided. Based on the information provided by the Canada Post website, specifically the confirmation that the packages were delivered and the "signatory names", I am satisfied that the addresses used were the addresses where the Landlords resided.

I accept the undisputed testimony of the Tenant that she sent the packages on October 8, 2017. I deem the hearing packages received by the Landlords on October 13, 2017, five days after their mailing, pursuant to section 90(a) of the *Act*. I also note that the Canada Post website indicates that the packages were delivered to Landlord A and Landlord B on October 12, 2017 and October 14, 2017 respectively.

I proceeded to ask the Tenant if she had served the Landlords with the evidence she had submitted. The evidence consisted of a one page letter from Landlord A and five pages of tax related documents. The Tenant testified that she did not serve the Landlords with this evidence. I told the Tenant that I would make a final determination of admissibility of this evidence in my written decision but that at that point my view was that it was inadmissible because it had not been served on the Landlords.

Rule 3.14 of the Rules of Procedure (the "Rules") states that a respondent must receive evidence that the applicant intends to rely on at the hearing "not less than 14 days before the hearing". Rule 3.17 of the Rules states that evidence not provided to the other party in accordance with the Rules, including Rule 3.14, "may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence".

The Tenant told me that she did not serve the Landlords with the one page letter because the letter was from Landlord A. She said she did not serve the Landlords with the five pages of tax related documents because this was simply her proof of address. I note that the evidence was submitted to the Residential Tenancy Branch (the "Branch") in November and October of 2017 and therefore it cannot be said that it was new evidence. In the circumstances, I will not admit the evidence submitted by the Tenant and I have not considered it in my decision.

Issue to be Decided

1. Is the Tenant entitled to a monetary order in the amount of $500.00 being double her $250.00 security deposit?

Background and Evidence

There was no admissible documentary evidence before me at this hearing.

I have considered all the oral testimony of the Tenant but will only refer to the evidence I find relevant in this decision.

The Tenant testified that Landlord A and Landlord B owned the rental unit. She said she knew this because Landlord A told her. The Tenant stated that she moved into the upper suite at the rental address as a roommate of Landlord A on May 1, 2013. She said that, after four months, Landlord A told her that the person in the suite downstairs was moving out and asked her if she wanted to move into the downstairs suite. She said the downstairs suite was a separate suite. She said she moved into the downstairs suite on September 1, 2013.

The Tenant testified that there was no written tenancy agreement. She testified that there was an oral tenancy agreement. She said the agreement was with Landlord A but that Landlord B sent her rent increase emails and signed a notice to end tenancy previously served on her.

The Tenant said the tenancy agreement was a month to month agreement. She testified that when she first moved into the downstairs suite the rent was half of $1,575.00. She said that by the time she moved out she was paying $630.00 rent. She testified that the rent was due on the last day of each month and that she paid by cheque. She said she paid a security deposit of $250.00. She stated that she paid the $250.00 to Landlord A when she first moved in to the upstairs suite as his roommate. She testified that there was an oral agreement between her and Landlord A that

Landlord A would keep the $250.00 as a security deposit when she moved to the downstairs suite. She said that she did not pay a pet damage deposit. She said that the oral tenancy agreement did not include additional terms. She testified that the agreement only related to her as a tenant but that she did have roommates throughout the tenancy. She said Landlord A rented the other rooms to the roommates. She confirmed that the roommates were not involved with the security deposit.

The Tenant testified that she moved out of the suite on August 31, 2017. She said that Landlord A still has her security deposit.

The Tenant testified that she did provide Landlord A with her forwarding address in writing. She said she sent Landlord A a letter by mail within two weeks of moving out. She said she mailed the letter to the rental address because Landlord A was still living in the upper suite when she moved out. She testified that the letter was dated and included Landlord A's name, her forwarding address and her signature. She did not send her forwarding address to Landlord B.

She said that Landlord A contacted her by email saying that he was not giving the security deposit back. I understood from her evidence that Landlord A had said there was some damage to the suite upon her moving out. The Tenant provided testimony about the absence of damage to the suite.

The Tenant testified that she is not aware of any application by the Landlords with the Branch to claim against the security deposit. The Tenant testified that the Landlords did not have an outstanding monetary order from the Branch in relation to her. She said she did not at any point agree in writing that the Landlords could keep some or all of the security deposit.

The Tenant testified that no move-in inspection or move-out inspection was ever done in relation to the rental unit. She said that the Landlords did not offer her any

opportunity to do a move-in inspection and she did not ask for one. She said she never received a move-in condition inspection report from the Landlords. She testified that the Landlords did not provide her with an opportunity to do a move-out inspection. She said she asked that they do one but they never came to the suite before she moved out. She testified that the Landlords never gave her a move-out condition inspection report.

I asked the Tenant if she was requesting double the security deposit back if I find that the Landlords breached the *Act* and she indicated she was.

Analysis

I accept the undisputed testimony of the Tenant that Landlord A told her that him and Landlord B owned the rental unit. Based on this, I am satisfied that Landlord A and Landlord B did own the rental unit and therefore were "landlords" as defined in section 1 of the *Act*. Further, I accept the undisputed testimony of the Tenant that she agreed to pay Landlord A rent to stay in the lower, separate rental unit on a month to month basis. Based on this, I find that the Tenant was a "tenant" as that term is used in the *Act*. I also find that the Tenant entered into an oral agreement with Landlord A regarding possession of the rental unit and therefore entered into a "tenancy agreement" as that term is defined in section 1 of the *Act*. I accept the undisputed evidence of the Tenant that she had dealings with Landlord B regarding the rental unit and I find that Landlord A and Landlord B were co-landlords.

I accept the undisputed testimony of the Tenant that she paid Landlord A a security deposit of $250.00 when she first moved into the upper suite as his roommate. I accept the undisputed testimony of the Tenant that her and Landlord A had an oral agreement that the $250.00 would serve as her security deposit when she moved to the downstairs suite. I find that once the Tenant occupied the downstairs suite this established a tenancy over which the *Act* has jurisdiction.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. The relevant portions of section 38 state:

Return of security deposit and pet damage deposit

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.

…

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

…

(6) If a landlord does not comply with subsection (1), the landlord

…

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

…

I accept the undisputed testimony of the Tenant that she mailed Landlord A her forwarding address in writing within two weeks of moving out of the rental unit. This triggered the Landlords' obligations under section 38(1)(c) and (d) of the *Act.* I accept the undisputed evidence of the Tenant that the Landlords did not repay the security deposit or make an application for dispute resolution claiming against the security deposit within 15 days as required under section 38(1)(c) and (d) of the *Act*.

Based on the undisputed testimony of the Tenant, I find the Landlords had no authority under the *Act* to keep the security deposit. Further, I find the Landlords extinguished their right to claim against the security deposit under sections 24 and 36 of the *Act* by failing to perform incoming and outgoing condition inspection reports.

I note that it is irrelevant to this application whether there was damage to the rental unit caused by the Tenant or not. The Landlords were required to either repay the security deposit or file a claim against the security deposit within 15 days of receiving the Tenant's forwarding address. If the Landlords thought that there had been damage caused to the suite, they should have filed a claim against the security deposit within the 15 day time limit. The Landlords are not entitled to keep the security deposit simply because they feel there was damage caused to the rental unit.

I find that the Landlords have not complied with section 38(1) of the *Act*. Pursuant to section 38(6)(b) of the *Act*, the Landlords must pay the Tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order in the amount of $500.00, double the amount of the $250.00 security deposit.

As the Tenant was successful in this application, I find that she is entitled to recover the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Based on the above, I grant the Tenant a monetary order in the amount of $600.00 pursuant to sections 38(6)(b), 67 and 72(1) of the *Act*.

Conclusion

The Tenant is entitled to a monetary order in the amount of $600.00 for repayment of double her security deposit pursuant to sections 38(6)(b) and 67 of the *Act* and for reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Tenant is granted a Monetary Order in the above terms. The Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the 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 *Act*.

Dated: May 4, 2018

Residential Tenancy Branch