Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to obtain a return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant JT appeared at the hearing. This tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant JT testified and supplied documentary evidence that the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 23, 2017, and deemed received under the *Act* five days later. The registered mail receipt number is noted on the front page of this decision.
The tenants' evidence indicates the registered mail was claimed by the landlord. I note the substantial amount of documentary evidence filed by the landlord in opposition to the tenants' application, and as a result I am satisfied that the landlord is aware of this proceeding.

I find that the notice of hearing was properly served on the landlord and that evidence was properly submitted by all parties except as noted below.

There was a substantial amount of evidence filed by the tenants and some of this evidence was uploaded only the day before the hearing date. The stated reason for the

late filing of these documents was to respond to the evidence of the landlord which the tenants note was one day late being served and uploaded.

Rule 3.11 of the Rules of Procedure state that an arbitrator may refuse to consider evidence where there was an unreasonable delay in submitting evidence. Although the rules state that an applicant should file all evidence within 3 days of filing a claim, Rule 3.14 requires an applicant to file evidence *at least* 14 days prior to a hearing, in any event. This allows a respondent time to review the claims against him as he must file any evidence in response at least 7 days prior to the hearing. These rules are in place to ensure principles of natural justice are followed.

In the circumstances I am not going to consider the evidence of the tenants that was uploaded only the day before the hearing as to do so would be a denial of natural justice since the landlord did not have the time to review and consider the additional evidence being brought against him.

Issue(s) to be Decided

Are the tenants entitled to:

- a Monetary Order for the return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*; and
- an order for the return of their filing fee pursuant to section 72 of the *Act*.

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony, not all details of the evidence are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

No written tenancy agreement was filed in evidence. The tenant JF provided testimony that the tenancy in question began on July 1, 2015, and ended on October 31, 2017, when the tenants left the premises due to their concerns over rat infestation. The tenant JF stated that no written notice of the tenants' intention to vacate the premises was sent to the landlord however, verbal notice was provided and accepted by the landlord on September 6, 2017.

This was a month to month tenancy. Rent was $1,200.00 per month, and a security deposit of $600 and a pet deposit of $200.00 were paid at the outset of the tenancy. The tenants were unable to give an exact date when they allege these payments were made but the tenant JT could say this took place the week of May 11, 2015. This evidence is uncontradicted.

The tenants did file in evidence a copy of what appears to be a draft letter. This is unsigned and undated. I noted that when this document is printed out the date is auto inserted into the document by the software the tenants used to create the draft letter. This draft letter contains the forwarding address of the tenants and a request that the landlord forward the security deposit to the tenant JF, "…by Wednesday December 6th, 2017.".

As proof of the service of the original of this draft letter on the landlord the tenants have filed a registered mail receipt with the name of the landlord printed on it. The registered mail receipt number is set out on the cover page of this decision. When asked at the hearing the tenant JF stated that she had sent the original of the draft letter to the landlord via registered mail on November 16, 2017.

The tenants also filed a copy of the invoice from Canada Post for the registered mail. The invoice from Canada Post is dated "2017/11/16. I find that the tenants' forwarding address was sent to the landlord via registered mail on November 16, 2017, and deemed received under the *Act* five days later on November 21, 2017.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after **the *later* of** the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security or pet deposit.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of section 38 of the *Act.*

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security or pet deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security or pet deposit, as required under section 38.

The security and pet deposits are held in trust for the tenants by the landlord.

At no time does the landlord have the ability to simply keep the security or pet deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the deposits or to deductions to be made to them, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the landlord feels entitled to keep the deposits, based on unproven claims. A landlord may only keep all or a portion of the deposits through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenants. Here the landlord did not have any authority under the *Act* to keep any portion of the security or pet deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security or pet deposit.

I note that the Landlord submitted a large volume of documentary evidence about the condition of the rental unit after the tenants left; however, the landlord is unable to make a monetary claim through the tenants' Application. The landlord had to file their own Application to keep the deposits with the 15 days of certain events, as explained above.

The landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the landlord pay the tenants the sum of **$ 1,700.00**, comprised of double the security deposit (2 x $800) and the $100.00 fee for filing this Application.

Conclusion

The tenants are given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: July 12, 2018

Residential Tenancy Branch