Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOJORITY INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The male tenant did not testify at this hearing, only the female tenant ("tenant") did. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf as well as on behalf of the landlord owner of the rental unit, as an agent at this hearing. This hearing lasted approximately 36 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

The landlord testified that he did not receive the tenants' application package until July 11, 2018, which he said was not within the three day period required under section 59(3) of the *Act*. He provided an email, dated July 16, 2018, from his receptionist indicating that she received the tenants' application on July 11, 2018. The tenant testified that the landlord's receptionist was served with the application for dispute resolution and the notice of hearing on December 8, 2017, the date that the tenants filed their application. The landlord denied this receipt. The tenant said that the tenants' written evidence package was served later on July 11, 2018.

I notified both parties at the hearing that I found that the landlord was duly served with the tenants' application package at least two weeks prior to the hearing date, in accordance with

Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*. Although the application for dispute resolution and notice of hearing may not have been sent to the landlord within three days, I find that the landlord had a chance to review and respond to the tenants' application. The landlord submitted written evidence including invoices and receipts claiming damage to the rental unit, which is not relevant to the tenants' application for the return of their deposit. The landlord claimed that he would have submitted more invoices and receipts for damages if he had more time, which I find are not relevant to this type of claim.

Further, the limited written evidence submitted by the tenants was a copy of the move-out condition inspection report that the landlord completed and gave to the tenants, as they were not present during that inspection, as well as emails between the landlord and tenants. The landlord already had that evidence from earlier in the tenancy and was aware that the tenants' security deposit had not been returned to them. I find that the landlord failed to demonstrate any prejudice as to how and when the landlord received the tenants' application package. The landlord confirmed that he was ready to proceed with the hearing, as did the tenants. In the interests of efficiency, based on both parties consent, and given that the landlord had proper notice of the tenants' application such that he reviewed and responded to the tenants' application, I proceeded with the hearing.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2015 and ended on December 13, 2016. Monthly rent in the amount of $3,500.00 was payable on the first day of each month. A security deposit of $1,750.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. A move-in condition inspection report was completed by both parties. The landlord did not have any written permission to keep any part of the tenants' security deposit. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

Both parties agreed that the tenants provided a written forwarding address to the landlord on December 13, 2016, by way of an email and the landlord wrote this information on the move-out condition inspection report. The landlord stated that he attended at the forwarding address provided by the tenants, to personally serve them with the landlord's written evidence package for this hearing, but he was told by the person who answered the door that the tenants did not live there. The tenant stated that her family member who answered the door was ill and may have been confused as to the question from the landlord. The landlord stated that he then mailed the landlord's written evidence package to the tenants at this address and the tenants confirmed receipt of the documents and confirmed they were still living there at the present time.

Both parties agreed that the landlord completed a move-out condition inspection report without the tenants present. The landlord stated that he gave the tenants two opportunities to conduct a move-out condition inspection but he did not issue the Notice of Final Opportunity to Schedule a Condition Inspection.

The tenants seek a return of double the amount of their security deposit, totalling $3,500.00, because the landlord failed to return it or make an application to keep it. They also seek to recover the $100.00 application filing fee.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities. The tenancy ended on December 13, 2016. The tenants provided a written forwarding address to the landlord in an email on the same date, with the landlord confirming receipt and acting on the information by including it in the move-out condition inspection report and mailing documents to the tenants for this hearing, which they received at that address. Accordingly, although email is not a permitted form of service for a forwarding address under section 88 of the *Act*, I find that the landlord was sufficiently served with the tenants' forwarding address for the purposes of section 71(2)(c) of the *Act*.

The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenants or file an application to claim

against it. In accordance with section 38(6)(b) of the *Act,* I find that the tenants are entitled to receive double the value of their security deposit of $1,750.00, totalling $3,500.00, from the landlord. No interest is payable on the landlord's retention of the tenants' security deposit during this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $3,600.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 26, 2018

Residential Tenancy Branch