Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 17, 2018 (the "Application"). The Tenant applied for the return of the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord (the "Agent") appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed at the outset that she was requesting double the security deposit back if I found the Landlord breached the *Residential Tenancy Act* (the "*Act*").

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed he received the hearing package and Tenant's evidence.

The Tenant testified that she did not receive the Landlord's evidence. The Agent testified that the package was left in the mail box at the Tenant's residence and provided the address. The Tenant advised that she asked that the Landlord serve documents at her office as she was going to be out of town. I looked at the Notice of Hearing and confirmed that the Tenant's service address is the office address.

I excluded the Landlord's evidence given the Landlord failed to serve the Tenant at her address for service specifically provided on the Application. As the Tenant did not receive the evidence, it would be unfair to admit it in the circumstances.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to the return of double the security deposit?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started August 15, 2014 and was for a fixed term ending August 31, 2015. Both parties agreed rent was $4,386.72 at the end of the tenancy. The Tenant paid a $2,000.00 security deposit. The agreement is signed by the Landlord and Tenant.

The parties agreed the Tenant vacated the rental unit May 31, 2018.

The Tenant sought $843.60 on the basis that the notice of rent increase issued September 30, 2017 was not served on her in accordance with the *Act*. She testified that the notice was sent by email and therefore not by a service method permitted under the *Act*. She acknowledged communicating with the Landlord via email prior to receiving the notice of rent increase.

The Agent pointed out that the Tenant paid five months of rent after the rent increase complained of without raising any issue in relation to service of the notice. The Agent testified that previous notices of rent increase had also been sent by email.

In relation to her forwarding address, the Tenant testified that she wrote it down and gave it to the Agent on May 18, 2018, the date of the move-out inspection. The Agent testified that the Tenant provided her forwarding address on May 18, 2018 verbally and he wrote it down.

The Tenant testified that she also provided her forwarding address to the Agent on June 17, 2018 by email. She again acknowledged that she communicated with the Landlord or Agent via email throughout the tenancy. The Agent acknowledged receiving the email on June 17, 2018. The Agent confirmed the parties corresponded via email throughout the tenancy.

In response to a specific question by me, the Agent said he was taking issue with the form in which he received the forwarding address given it was via email and not in a written letter as required.

In reply, the Tenant then said she was not sure who wrote the address down on May 18, 2018. She said the Agent acknowledged receiving the forwarding address and that she followed this

up with an email. She also pointed out that the Agent knew her forwarding address as that is where he left the evidence package according to his testimony.

Both parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit. The Landlord still holds the entire security deposit.

The parties agreed that both did a move-in inspection at the start of the tenancy.

The Tenant testified that she did not participate in the move-out inspection because the Agent did not have the original move-in report. The Agent testified that the Tenant did participate in the move-out inspection. He said this was not a situation where the Landlord offered the Tenant two opportunities to do the inspection because they agreed to do it May 18, 2018.

Analysis

The sole basis for the Tenant's request for the $843.60 was that the notice of rent increase sent in September of 2017 was sent via email. The Agent submitted that this was acceptable and pointed out the parties communicated via email.

I note that both parties took different positions on whether emails were acceptable depending on whether it suited them in the moment. The Tenant argued that an email was insufficient for the notice of rent increase yet sufficient when she sent her forwarding address by email. The Agent argued email was sufficient for the notice of rent increase yet insufficient for the forwarding address.

I find based on the testimony of the parties that they communicated via email throughout the tenancy. I decline to award the Tenant reimbursement for the $843.60 simply because the notice of rent increase was sent via email given this was an established form of communication between the parties, she received the email and she paid the increased rent amount for five months without complaint. I dismiss this aspect of the Application without leave to re-apply.

In relation to the security deposit, there is no issue that the Tenant paid a $2,000.00 security deposit.

The Tenant was required to provide the Landlord with her forwarding address in writing in order to trigger section 38 of the *Act.* Providing a forwarding address verbally is not sufficient. I am not satisfied that the Tenant did provide her forwarding address in writing on May 18, 2018 as the Agent disputed this and the Tenant acknowledged she could not say whether she provided it verbally or in writing.

I find the Tenant did provide her forwarding address in writing on June 17, 2018 via email. I find email sufficient to trigger section 38 of the *Act* if email was an established form of communication between a tenant and landlord and if the landlord received the email. The Agent acknowledged that email was an established form of communication with the Tenant and that he received the email June 17, 2018.

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. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the Tenant's forwarding address in writing on June 17, 2018 to repay the deposit with interest or apply for dispute resolution claiming against it.

There is no issue that the Landlord did not repay the deposit or apply for dispute resolution claiming against it. I find the Landlord failed to comply with section 38(1) of the *Act*. Based on the testimony of the parties, I find that none of the exceptions in sections 38(2) to 38(4) of the *Act* applied.

I note that the Tenant filed the Application on June 17, 2018, the same date the Agent received her forwarding address. Although the Tenant applied too early for the return of the security deposit, the 15-day time limit in section 38(1) of the *Act* had passed by the time of the hearing. Further, the Agent did not raise this as an issue or state that the Landlord failed to file an Application for Dispute Resolution within the 15-day time limit because the Tenant had already filed the Application. In the circumstances, I do not find it relevant that the Tenant applied too early.

Further, I note that the parties disagreed on whether the Tenant participated in the move-out inspection. This raises the issue as to whether the Tenant extinguished her rights in relation to the security deposit by failing to participate. I conclude that she did not. The Agent took the position that the Tenant did participate in the move-out inspection. Further, the Agent acknowledged that this was not a situation where the Landlord provided the Tenant with two opportunities to do the inspection and the Tenant refused. Therefore, I find the Tenant did not extinguish her rights in relation to the security deposit under section 36(1) of the *Act*.

Given the Landlord did not comply with section 38(1) of the *Act*, pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the deposit and must pay the Tenant double the amount of the deposit. The Landlord is required to return $4,000.00 to the Tenant. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was partially successful in this application, I grant her reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of $4,100.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of $4,100.00 and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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: October 15, 2018

Residential Tenancy Branch