Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVE HOLDINGS OF CANADA INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") for the return of the security deposit and pet damage deposit, for monetary compensation and for the recovery of the filing fee paid for this application.

The Tenant and an agent for the Landlord (the "Landlord") were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, along with notice of the rescheduled hearing date from the Residential Tenancy Branch. However, the agent for the Landlord was unsure if they had received all of the evidentiary material submitted by the Tenant.

The Tenant provided testimony that she sent the Notice of Dispute Resolution Proceeding documents, along with copies of her evidence by registered mail, with an additional copy sent by email. The Landlord testified that copies of their evidence was sent by registered mail, but the Tenant claimed she did not receive any evidence from the Landlord.

As both parties were unsure of the evidence they had received from the other party, I reviewed the evidence submitted by both parties to the Residential Tenancy Branch. As all of the evidence submitted appeared to be evidence that both parties would have already seen, such as emails between parties, text messages and the tenancy agreement, I found that continuing with the hearing would not prejudice either party.

However, the parties were notified that if the other party was referencing evidence they were not aware of, or had not seen, they were to notify me during the hearing and

consideration as to whether to include that evidence would be given. During the hearing, neither party objected to any evidence brought forth by the other party.

During the hearing, the Landlord stated his belief that the monetary claims of the Landlord would be heard at the same time. However, when the Landlord confirmed that they had not filed an Application for Dispute Resolution, it was explained that only the claims on the Tenant's application could be heard. Both parties are able to pursue any further claims remaining from this tenancy through filing an Application for Dispute Resolution.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit and pet damage deposit?

Should the Tenant be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2017 and was a fixed term tenancy set to end on July 31, 2018. Monthly rent was $1,245.00. A security deposit of $622.50 and a pet damage deposit of $200.00 was paid at the outset of the tenancy.

The tenancy agreement was submitted into evidence and confirms the details as described by the parties.

The Tenant provided testimony that a couple months after moving in, she became aware that she would need to be in another city for training for several months. Due to this, she began to look into the subletting process and asked the Landlord if she would

be able to find a sublet tenant for the rental unit. The Landlord agreed and requested that the Tenant pay a fee of $250.00 for the costs incurred through the subletting process.

The Tenant testified that the Landlord required an agreement with the sublet tenant, instead of the agreement being between herself and the sub-tenant. The Tenant paid the $250.00 fee on December 10, 2017 and testified that the e-transfer payment was accepted by the Landlord on December 11, 2017.

The Tenant provided testimony and evidence of the email exchange between herself and the Landlord regarding the new sub-tenants she found for the rental unit. On December 12, 2017, the Landlord stated that the subtenants would not be accepted as they were a couple. The Landlord advised the Tenant that only a single person was able to live in the one-bedroom unit.

The Tenant testified that this decision was contrary to the tenancy agreement which stated that occupancy must not exceed two persons in a one-bedroom unit. The Tenant stated that the Landlord responded by email on December 13, 2017 that they would not engage in any further conversations about the denial of the subtenants.

As the Tenant was not able to find any other potential subtenants, she stated that she had to move out of the rental unit. The Tenant submitted into evidence a letter dated December 13, 2017 in which she notified that Landlord that they were in breach of a material term of the tenancy agreement.

The letter further outlined that the denial of two people as subtenants, and only accepting a single person was a breach of a material term of the tenancy agreement. The Tenant noted a clause in the tenancy agreement addendum which states that a one bedroom must not exceed two persons.

The Tenant's letter stated the following: "This breach of a material term occurred on December 11th and 12th 2017. I feel that a reasonable amount of time to correct this breach is 1 day from today December 13th 2017. Therefore, I will be ending my tenancy if the matter is not corrected by midnight December 14th 2017." (Reproduced as written)

The Tenant provided testimony that as she did not hear further from the Landlord regarding the subtenant issue, she moved out of the rental unit on December 31, 2018. The Tenant stated that no further notice to end the tenancy was provided as her letter regarding the breach was clear that she would be moving out. The Tenant also stated

that she had outlined her requirement to be away in another city for training, so the Landlord would have been aware that she was unable to stay in the rental unit when the sublease was not allowed.

The Tenant stated that she provided her forwarding address to the Landlord, but that she has not received any amount from her security deposit or pet damage deposit back. When asked to confirm how and when her forwarding address was provided, the Tenant was unable to state the details or find any paperwork that would confirm the details.

The Tenant was provided time to look through her evidence in front of her, but explained that due to the number of documents and the time that had passed since the tenancy ended, she was no longer able to locate that information or point out where to find this information in the evidence submitted to the Residential Tenancy Branch.

The Tenant applied for the recovery of the filing fee paid for this application, as well as the recovery of the filing fee for a previous hearing regarding this tenancy, for a total of $200.00.

The Tenant testified that the previous hearing was her request for the Landlord to allow her to sublet, but due to the timing of when the hearing was scheduled, she had already moved out. The parties attended the hearing and the Tenant withdrew her application. The Tenant had applied for the return of the filing fee for that application at the time, and in the decision, it was not awarded to her as the application was withdrawn at the hearing.

The Landlord provided testimony that the $250.00 charged to the Tenant was for their time involved with meeting a new sub-tenant and confirming the details of the sub-tenancy. He stated that he received the $250.00 payment in December 2017 and screened the application that the Tenant provided.

However, the Landlord stated that the one-bedroom unit was not suitable for more than one person, which is why the Tenant was denied the subtenants that she found. The Landlord clarified that there are four one-bedroom units in the rental building and no more than one person has ever been allowed to reside in any of these units.

The Landlord testified that they never received notice that the Tenant was moving out. When they didn't receive rent for January 2018 they contacted her and found out that she had moved out of town without returning the keys. He stated that they requested the keys back and they were returned in mid-January 2018.

The Landlord agreed that they have not yet returned the security deposit or pet damage deposit, but instead stated that they applied these amounts towards the money owed to them for the Tenant breaking the fixed term tenancy agreement. The Landlord stated that as they were not aware the Tenant was moving out, the Tenant abandoned the rental unit.

When the Tenant could not confirm the details of how her forwarding address was provided, the Landlord declined to answer whether they had received her forwarding address or not.

The Landlord stated that the previous hearing was resolved as the tenancy had already ended at that point.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 34(3) of the *Act* which states the following:

> (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Despite the Landlord's explanation of why the $250.00 fee was charged to the Tenant for the costs associated with setting up a sublease, I find that the *Act* is clear that landlords may not charge a fee associated with a sublease arrangement. As such, I find that the Landlord charging this fee to the Tenant was in direct contravention of the *Act.*

Pursuant to Section 67 of the *Act,* I find that the Landlord must pay back $250.00 to the Tenant.

As for the Tenant's claims for the return of the security and pet damage deposit, I refer to Section 38(1) of the *Act* which states the following:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (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.

As neither party was able to confirm whether the Tenant's forwarding address had been provided, I find insufficient evidence to determine that the Landlord has not returned the deposits within the time allowable under the *Act.*

Although the Tenant testified that she had provided the address to the Landlord, without evidence, dates, or a method of service, I am unable to confirm. I also refer to Rule 7.4 of the *Residential Tenancy Branch Rules of Procedure* which states that evidence must be presented by the party that submitted it. The Tenant was also not able to reference any documentary evidence that would prove service of her forwarding address.

The Landlord's refusal to speak about the forwarding address did not help to clarify the matter. I caution the Landlord that they have a responsibility to deal with the security and pet damage deposits within the 15 days provided under the *Act.* Failure to do so may result in the Landlord owing double the deposits to the Tenant, in accordance with Section 38(6).

Without proof of service of the forwarding address, I decline to award the return of the security deposit or pet damage deposit to the Tenant. If the Tenant has not already done so, I advise the Tenant to provide her forwarding address in writing as required by the *Act* and the Landlord to respond as outlined in Section 38(1) of the *Act.*

If the Landlord is already in receipt of the forwarding address, I advise the Landlord to meet their responsibilities for the deposits under Section 38 of the *Act.* Security and pet damage deposits are held in trust by the landlord for the tenant. A landlord cannot retain the deposits simply because they believe they are entitled to do so.

As the Tenant was partially successful in her application, I award the recovery of the filing fee in the amount of $100.00, pursuant to Section 72 of the *Act.* As for the Tenant's application for a filing fee connected to a previous hearing, I find that a decision was already made on that filing fee as outlined in the decision from the

hearing. As such, I find that the legal principle of *res judicata* applies, meaning that a matter that has previously been decided on cannot be reheard. As such, I decline to award the filing fee from the previous hearing.

The Tenant is issued a Monetary Order for the return of the $250.00 fee paid for the sublease considered and $100.00 for the recovery of the filing fee, for a total amount of $350.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **$350.00** for the return of a sublease fee paid and for the recovery of the filing fee paid for this application. The Tenant is provided with this Order in the above terms and 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: October 2, 2018

Residential Tenancy Branch