Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, 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 28, 2018 (the "Application"). The Tenant applied for the return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with the Advocate. The Landlord 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 had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and evidence.

The Landlord confirmed he received the hearing package. The Landlord had not received all of the Tenant's evidence. The Advocate advised that the missing evidence was in the same package as the hearing package. The Landlord testified that the missing evidence was not in the same package as the hearing package. The Tenant did not submit any evidence in relation to the contents of the package sent to the Landlord. Nor did the Tenant call a witness in relation to this. The evidence submitted, the Tracking Number for the package and proof that the Landlord signed for it, was not helpful because the Landlord acknowledged receiving the package. The parties disagreed about what was in the package.

It is the party serving evidence that must satisfy me that the evidence was served in accordance with the *Residential Tenancy Act* (the "*Act*") and Rules of Procedure (the "Rules"). Here, the parties gave conflicting testimony about the contents of the package received by the Landlord. The Tenant submitted no evidence to support her position in

this regard. Therefore, I was not satisfied that the evidence was served on the Landlord in accordance with the *Act* and Rules.

I asked for the parties' position on whether the evidence should be admitted or excluded. The Landlord submitted that the evidence should be excluded. The Advocate submitted that the evidence should be admitted but continued to focus on why I should find the evidence was served in accordance with the *Act* and Rules rather than on why I should admit the evidence despite not being satisfied of service.

I excluded the evidence not received by the Landlord. I found it would be unfair to the Landlord to consider evidence that he says he did not receive and that I was not satisfied was served in accordance with the *Act* and Rules. I admitted the written tenancy agreement despite the Landlord not receiving this given he would have been aware of the contents of the document in any event.

As there was no issue with service of the hearing package, I proceeded with the hearing. The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the 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 the return of double the security deposit?

2. 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 Landlords, Tenant and another tenant in relation to the rental unit. The tenancy started October 15, 2016 and was a month-to-month tenancy. The Tenant paid a security deposit of $700.00. The agreement is signed by one of the Landlords and the Tenant; however, there was no issue that both Landlords were landlords and both tenants were tenants.

The parties agreed the Tenant vacated the rental unit May 31, 2018. The Landlord confirmed he still holds the entire security deposit.

The Advocate advised that the Tenant provided her forwarding address in writing to the Landlord in a letter dated and mailed June 6, 2018. After much discussion in this regard, the Landlord acknowledged receiving the June 6th letter on June 13th.

The parties agreed on the following. The Landlords 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 Landlords could keep some or all of the security deposit. The Landlords did not apply to keep the deposit.

The Tenant testified that no move-in inspection was done. The Landlord testified that there was a move-in inspection done. He said he showed the Tenant the rental unit and showed her that it was in good condition. He said this occurred prior to the Tenant agreeing to rent the rental unit. The Landlord acknowledged that a Condition Inspection Report was not completed upon move-in.

The Tenant testified that she tried to do a move-out inspection with the Landlord but that one was not done. The Landlord testified that no move-out inspection was done because the Tenant moved out early. He said he did offer the Tenant two opportunities to do the inspection. He acknowledged that he did not complete the Residential Tenancy Branch form in this regard.

Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the security deposit for damage to the unit under section 38(1) of the *Act* if they have extinguished their right to claim against the security deposit under either section 24 or 36 of the *Act*.

I find that no move-in inspection was done. I do not accept that the description of the walk-through provided by the Landlord qualifies as a move-in inspection given this was done prior to the Tenant agreeing to rent the unit and given no Condition Inspection Report was completed.

I find the Tenant did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

In relation to the move-out inspection, the Landlord acknowledged that he did not provide the Tenant with a second opportunity to do the inspection on the approved form. This is required under section 17(2)(b) of the *Residential Tenancy Regulation* (the "*Regulations*") and 35(2) of the *Act*. Given the Landlord did not comply with section 35(2) of the *Act*, I find the Tenant did not extinguish her rights in relation to the security deposit under section 36 of the *Act*.

Given no move-in inspection was done, and no Condition Inspection Report completed on move-in, I find the Landlords did extinguish their right to claim against the security deposit for damage to the rental unit under section 24 of the *Act*.

Based on the testimony of the parties, I find the Landlords received the Tenant's forwarding address in writing on June 13, 2018. This is after the date the Tenant vacated the rental unit and therefore June 13, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from June 13, 2018 to repay the security deposit or claim against the deposit for something other than damage to the rental unit.

Based on the testimony of the parties, I find the Landlords did not repay the security deposit or claim against it for something other than damage to the rental unit. Therefore, the Landlords failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

The parties spoke about an issue with the dryer in the rental unit and the Landlords' request for the Tenant to reimburse them for the cost of repairing the dryer. I note that this is not relevant to this application. The Landlords had extinguished their right to claim against the security deposit for damage to the rental unit. At the end of the tenancy, the only options open to the Landlords were to return the security deposit to the Tenant or apply for dispute resolution claiming against it for something other than damage to the rental unit. The Landlords were not permitted to keep some or all of the security deposit because they felt the Tenant was responsible for the dryer issue.

Given the Landlords failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlords are not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*. Therefore, the Landlords must return $1,400.00 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 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 $1,500.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of $1,500.00 and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If 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: November 09, 2018

Residential Tenancy Branch