Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 10, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit
- A monetary order for damage or loss under the Act.

The Tenants were represented at the hearing by one of the Tenant's mother, R.S (referred to as the Tenant). The Landlord did not appear at the hearing. The Tenant stated that she sent the Notice of Hearing, and evidence to the Landlord by registered mail on August 15, 2018. The Tenant stated that she sent this package to the address for service listed on the Tenancy Agreement. Pursuant to section 88 and 90 of the Act, I find this package is deemed served 5 days after it was mailed, on August 20, 2018.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant stated that she wished to withdraw her application for monetary compensation for damage or loss under the Act, and she only wanted to proceed with her request to obtain the security deposit back at the hearing today. I hereby amend the

Tenants' application accordingly, and I allow the Tenants to withdraw this claim from this application. The Tenants are granted leave to reapply for this item, if required.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant stated that rent was $2,600.00 per month, and the Landlord still holds a security deposit in the amount of $1,300.00. The Tenant stated that the tenancy ended on May 15, 2018, and that no move-out inspection was done, despite their requests to do one. The Tenant stated that she provided her forwarding address in writing on April 19, 2018, by email. The Tenant stated that the Landlord responded to this email and proceeded to take issue with other aspects of the tenancy.

The Tenant stated that email was the main method of communication between the Tenants and the Landlord. The Tenant provided evidence to show their communication via email, and also provided a copy of the email sent to the Landlord (with their forwarding address) on April 19, 2018. The Tenant stated that she received a response to this email the same day, so she knew the Landlord got the forwarding address. The Tenant stated that it became clear the Landlord believed he could just keep the deposit based on what he believed were valid reasons. The Tenant stated that the Landlord has not returned any of the deposit.

Analysis

Based on the undisputed documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I note the Tenant has provided evidence that they communicated regularly with the Landlord by email. The Tenant also provided a copy of the email they sent on

April 19, 2018, listing their forwarding address. I further note the Tenant stated that the Landlord replied to this email the same day. Based on this information, I find the Landlord was served with the Tenants' forwarding address in writing on April 19, 2018, the day he responded to it.

In determining that the Landlord received the Tenants' forwarding address "in writing" when it was sent by email, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

I was further guided by section 6 of the *Electronics Transactions Act,* which stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. Since the Tenant stated the Landlord responded to the email, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

In reaching the conclusion that the forwarding address was sufficiently served by email I was influenced, to some degree, by the Tenants' evidence that they communicated with the Landlord via email on several occasions. This satisfies me that the Landlord was not averse to communicating with the Tenants by email.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing, and the end of the tenancy (whichever is later). In this

case, the later of these two dates is May 15, 2018, the day the Tenants vacated the rental unit. Since the Tenants provided their forwarding address prior to moving out, the Landlord had 15 days after the end of the tenancy to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit ($1,300.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the $100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for $2,700.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **$2,700.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: December 11, 2018

Residential Tenancy Branch