



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking return of double her security deposit and recovery of the filing fee.

The hearing was conducted via teleconference and was attended by the tenant, her supporter, the landlord and her agent.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 14, 2018 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The landlord could not recall specifically when the hearing package was received but did confirm receipt sometime in September 2018.

Based on the testimony of both parties, I find that the landlord has been sufficiently served with the hearing documents and the tenant's evidence pursuant to the *Act*.

The landlord submitted that they served the tenant with their evidence by Canada Post – Priority Post to the tenant's out of province address on December 29, 2018. The landlord also testified the evidence relating to the landlord's Application to be heard on April 23, 2019 (file number is listed on the cover sheet of this decision) was served to the tenant's local address on January 2, 2019 by registered mail and courier.

The tenant testified that she received the landlord's evidence sent to her local address on January 7, 2019 but has not yet received the landlord's evidence sent to her out of province address, which is the address for service provided by the tenant on her Application for Dispute Resolution.

Upon review of the evidence from both files, I am satisfied that the tenant did receive the landlord's evidence on January 7, 2010, which was 3 days prior to this hearing.

Residential Tenancy Branch Rule of Procedure 3.15 states, among other things,

“The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.”

As the landlord’s evidence was not received by the tenant until 3 days prior to the hearing I find the landlord has failed to serve the tenant in sufficient time and in accordance with the Rules of Procedure. However, the tenant testified that she has reviewed the landlord’s evidence was prepared to proceed and respond.

As such, I have considered the documentary evidence of both parties.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on June 29, 2017 for a one-year fixed term tenancy beginning on September 1, 2017 for a monthly rent of \$975.00 with a security deposit of \$700.00 paid. Despite the requirement under Section 13 of the *Act*, the tenancy agreement does not stipulate what day in the month that rent is due.

The parties agreed that the tenant paid rent for the months of September to December 2017 inclusive but that the tenant vacated the rental unit; returned her access keys; and provided her forwarding address on November 25, 2017.

The landlord submitted that because the tenant abandoned the rental unit she should forfeit her right to claim the return of the security deposit. The landlord relied both on their submission that the tenant breached the tenancy agreement and on Section 36(2) of the *Act*, which states:

“Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.”

The parties agreed that the landlord did not conduct a move in or move out condition inspection.

Analysis

Section 23 states the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed upon day. Section 23 goes on to say the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection; the landlord must complete a condition inspection report in accordance with the regulations; both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 24 of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and the tenant has not participated on either occasion.

This section further states the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 35 of the *Act* states the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

This section also states the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection; the landlord must complete a condition inspection report in accordance with the regulations; both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations; the landlord may make the inspection and complete and sign the report without the tenant if the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Section 36 states the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2) [2 *opportunities for inspection*], and the tenant has not participated on either occasion.

It also states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [2 *opportunities for inspection*], having complied with section 35 (2), does not participate on either occasion, or having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 24 of the Residential Tenancy Regulations stipulates that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or subject to subsection (2), the tenant leaves the personal property on residential property that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or from which the tenant has removed substantially all of his or her personal property.

Section 24(2) continues that the landlord is entitled to consider the circumstances described above as abandonment only if the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Despite the fact that there is no definition in the *Act* or regulation that speaks to abandonment for the purposes of ending the tenancy, I would agree, based on the wording of the regulation, with the landlord's submissions that the tenant can be considered as having abandoned the rental unit one month after she left the unit; did not pay rent and had provided her notice that she would not return.

While the landlord argued that since the tenant had abandoned the rental unit she has extinguished her right to return of the security deposit as per Section 36, I note that both Sections 24 and 36 prescribe the conditions under which a tenant extinguishes their right of return to a security or pet damage deposit.

Both sections indicate that the tenant extinguishes their right to return of the deposit **only** if the landlord has complied with their obligation to set a condition inspection (either at the start or end of the tenancy) by offering two opportunities to attend and the tenant does not participate on either occasion.

However, as noted above it is the landlord who was required, at the start and end of the tenancy, to set up a move in condition inspection and complete a Condition Inspection

Report and provide copies of that Report to the tenant. From the testimony of both parties I find that the landlord did not conduct a move in or move out condition inspection; complete a Condition Inspection Report; or provide such a Report to the tenant as obligated under both Sections 23 and 35.

As I have found the landlord has failed to comply with her obligations under Section 23 and 35, I find the landlord has extinguished her right to claim against the deposit. I further find the tenant did not extinguish her right to return of the deposit.

Section 44 of the *Act* stipulates that a tenancy ends if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 45 (2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the requirements under Section 45(2) and how the tenant ended the tenancy may be relevant to a potential claim for lost rent and/or revenue for the duration of the fixed term of a tenancy agreement on the part of the landlord, I find it is not relevant when determining when the tenancy ended.

In the case before me, I find, based on the testimony of both parties, that the tenancy ended pursuant to Section 44 (2)(d) on November 25, 2017 when she vacated the rental unit and returned the keys to the landlord. I also find that the tenant provided her forwarding address to the landlord on the same date.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the above, I find the landlord was required to either return the security deposit held or filed an Application for Dispute Resolution seeking to retain the deposit no later than November 10, 2017. As the landlord file her application seeking to retain the security deposit on January 2, 2019, I find the landlord has failed to comply with her obligations under Section 38(1) and the tenant is entitled to return of double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,500.00** comprised of \$1,400.00 double the amount of the security deposit held and the \$100.00 fee paid by the tenant for this application.

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: January 25, 2019

Residential Tenancy Branch