Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord joined the teleconference call, requested an adjournment and chose to disconnect prior to the conclusion of the hearing. The teleconference line was left open for the duration of the hearing to allow the landlord to reconnect.

The tenant testified that they served their application for dispute resolution dated September 26, 2018 and evidence on the landlord by registered mail sent on the same date. The tenant provided a Canada Post tracking number as evidence of service. The landlord confirmed receipt of the tenant's hearing package. Based on the evidence I find that the landlord was served with the tenant's application and evidence in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Adjournment Request

At the outset of the hearing, the landlord made a request that the hearing be adjourned. The landlord said that they have been advised by a physician to avoid stress. The landlord submitted into evidence a doctor's note dated January 22, 2019 which says:

> The above is pregnant and has a lot of stress and is not fit for going to cort.

The landlord said that since being served with the tenant's application they have been suffering inordinate stress and have been unable to prepare for the hearing. When asked why the

landlord had not made any earlier attempts to seek an adjournment the landlord said that their doctor first made the recommendation at the appointment on January 22, 2019. The tenant did not consent to the hearing being adjourned and rescheduled. The tenant disputed having been served with the landlord's evidence consisting of the doctor's note.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Under the circumstances, while I accept that the landlord has a doctor's note advising against "going to cort", I find that the landlord's need for an adjournment arises out of their own actions. The landlord was served with the notice of hearing in September 2018, and had nearly five months to prepare for the present hearing. The landlord could have requested an adjournment at an earlier date or arranged for an agent to attend on their behalf. The landlord did neither. The landlord's medical condition of stress is not one that is unforeseen but something which the landlord said has been an ongoing issue. The landlord was aware of their physical state and said they had consulted with their physicians several times over the past months. I find that a single doctor's note drafted two days prior to the hearing is insufficient to establish that there is any real prejudice to the landlord to proceed with the hearing.

Under these circumstances, I find that it would be unfairly prejudicial to the tenant to adjourn the present hearing. The landlord was served with the notice of hearing in September 2018 and had ample time to prepare or to seek an adjournment. I find that it would be contrary to the principles of natural justice to allow the landlord to seek an adjournment on the basis of ongoing stress when they failed to take any action earlier. At the hearing, I found that the landlord had not met the criteria established for granting an adjournment and proceeded with the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified to the following facts. This periodic tenancy began in July 2018 and ended August 2018. The monthly rent was $2,250.00 payable on the first of each month. A security deposit of $1,125.00 and pet damage deposit of $1,125.00 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant said they provided their forwarding address by text message and email sent on September 4, 2018. The tenant did not give written authorization that the landlord may retain any portion of the security or pet damage deposit.

While the landlord declined to participate in the full hearing, they said that the tenant has caused inordinate stress to the landlord, caused damage to the suite and failed to pay the full rent owing.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the tenant's evidence that they provided a forwarding address to the landlord in writing on September 4, 2018. I accept the evidence that no written authorization allowing the landlord to retain any portion of the deposits was provided.
I accept the undisputed evidence that the landlords have not returned the security deposit in full nor have they filed an application to retain the deposit.

Even if the landlord felt that this was a less than ideal landlord-tenant relationship, a landlord may not unilaterally withhold the security and pet damage deposit for a tenancy without following the appropriate steps in accordance with the *Act*.

Furthermore, the tenant testified that no condition inspection report was prepared at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection report in accordance with section 23 extinguishes their right to claim against the security deposit.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit and pet damage deposit in full within the required 15 days from September 4, 2018. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the

landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an $4,500.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenant's application was successful the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of $4,600.00 against the landlord. The tenant is provided with a Monetary 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: January 24, 2019

Residential Tenancy Branch