Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant applies to recover an $850.00 security deposit and a $400.00 pet damage deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*"). She also seeks the equivalent of twelve months rent pursuant to s. 51(2) of the *Act,* arguing that the rental unit has not been used for the stated purpose in the two month Notice ending this tenancy, for at least 6 months' duration, beginning within a reasonable period after the effective date of that Notice.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlords have brought their own application (related file number shown on cover page of this decision) seeking compensation for damage to the premises. That application was made April 17, 2019. It is set for hearing July 26, 2019 and has been assigned to a different arbitrator. The parties requested that it be heard with this application but that request was declined. The question of the state of the premises at the end of the tenancy is a discreet matter, unrelated to the issues raised by this application or the evidence supporting those issues. Given that fact and the time available for this hearing I declined the request.

Issue(s) to be Decided

Do the landlords presently have a lawful right to hold the deposit money? Have they incurred the doubling penalty set out in s 38 of the *Act*? Have the landlords occupied the rental unit for at least six months?

Background and Evidence

The rental unit is a two bedroom house, a converted "modular home." The tenancy started in November 2017 for a fixed term to November 2018 and then month to month unless otherwise agreed. The monthly rent was $1700.00, due of the first of each month. The landlords received and still hold an $850.00 security deposit and a $400.00 pet damage deposit.

In the summer of 2018 the landlords gave the tenant a two month Notice to End Tenancy for landlord use of property, as permitted by s. 49 of the *Act*. The tenant vacated about November 1. She provided the landlords with her forwarding address in writing on October 18, 2018.

The tenant says that neither landlord nor a close family member is living in the rental unit. She thinks the landlord Ms. S. is living in a converted garage elsewhere on the property and that the rental unit has been re-rented. In support of this allegation she submits the unsigned email of a friend Mr. J.S., who attended the property ostensibly to retrieve the tenant's mail after she'd moved out. Mr. J.S. reports in his email that on November 23 he attended the property and was met outside by a young man who identified himself as "C..r..y" (*name redacted*). Mr. J.S. asked him if he was the "new tenant" and the young man replied indicating that his mother was the new tenant.

It is apparent that the landlords have a son who's name is "C..d..y" (*redacted*) but the tenant says Mr. J.S. knows the landlords' son and would not have confused him with the young man he met at the property on November 23. The landlord's son had been living in the converted garage during this tenancy.

The tenant says that on November 25 she received an email from the landlord Ms. R.S. telling her that her mail coming to the property was not a responsibility of hers "nor the new tenant."

In response, the landlord Ms. R.S. testifies that she has been living there since November 1, 2018 and that she and her husband were having marital troubles thus Mr. J.H. was not living there full time. She says that when Mr. J.S. attended on November 23 it was her son "C..d..y" that he met outside and that she was then in the house with company. She says Mr. J.S. came to the house again in January to retrieve a cheque and she gave him the cheque from inside the door to the house.

She produces utility bills which confirm that she is paying Hydro and cable though the bills go to different addresses.

Analysis

I have considered the evidence carefully and conclude that the tenant and the landlord Ms. R.S. gave their testimony in a forthright and consistent manner. There is no basis to prefer one's testimony over the other.

The Deposit Monies Claim

Section 38 of the *Act* requires that once a tenancy has ended and once a tenant has provided her forwarding address in writing, a landlord has a fifteen day window to either repay the deposit money or to make an application to keep all or a portion of it. If a landlord fails to do either of those things within that fifteen day window, the *Act* imposes a penalty by doubling the amount of the deposit money credited to the tenant.

In this case the landlords have clearly breached s. 38. Their application for a monetary award against the tenant was not brought until April 2019.

The landlords' materials filed in this matter discloses a defense that the tenant's right to the deposit money and to the doubling penalty have been forfeited because she did not take part in a move-in or move-out inspection. Neither that material nor the argument were not raised during the hearing and the landlord Ms. R.S. did not testify about the alleged non-attendance. I therefore do not consider this defense to have been made out.

At this point in time, as the landlord has neither the tenant's written authorization to keep any portion of the deposit money nor an award entitling her to do so, the tenant is entitled to the return of her $850.00 security deposit and $400.00 pet damage deposit. She is entitled to have that sum doubled under s. 38. I award her $2500.00 under this item of her claim.

The Twelve Months Rent Claim

Section 51(2) of the *Act* provides that a landlord must pay a tenant the equivalent of twelve months rent in the event the landlord ends the tenancy with a two month Notice to End Tenancy for landlord use of property and if the rental unit is not used for that

stated purpose for at least six months beginning within a reasonable time following the effective date of the Notice.

The evidence submitted by the tenant raises a suspicion that the landlord has simply replaced her with a different tenant. It remains an open question whether Mr. J.S. met the landlord's son or someone else at the property on November 23. Mr. J.S. did not attend the hearing and so was not subject to questioning about it. The tenant's assertion that he would know "C..d..y" from "C..r..y" carries little weight in my view. The landlord M.R.S.'s quick email back to the tenant about her mail suggests it was she in the house that day. The landlord's email referring to "the tenant" is significant. However, her explanation that she meant to refer to any tenant whom she might rent the converted garage to, not the rental unit is question, is not unbelievable.

In all the circumstances of this case and having regard to the significant penalty imposed by s. 51(2) I find that the tenant has failed to establish on a balance of probabilities that the landlord has not occupied the premises for at least six months following the end of this tenancy and I dismiss this item of the claim.

Conclusion

The tenant is entitled to a monetary award of $2500.00 plus recovery of the $100.00 filing fee. She will have a monetary order against the landlords in the amount of $2500.00.

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: May 16, 2019

Residential Tenancy Branch