Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Austeville Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the $852.50 security deposit, a monetary order for recovery of $400.04 in moving costs, and to recover the $100.00 cost of their Application filing fee.

The Tenant and two agents for the Landlord, C.F. and K.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 1, 2015, running to June 30, 2016, and then became a periodic tenancy. The Parties agreed that the Tenant paid the Landlord a monthly rent of $1,705.00, due on the first day of each month, and that the Tenant paid the Landlord a security deposit of $852.50, and no pet damage deposit.

The Parties agreed that the tenancy ended after the Tenant gave the Landlord one month notice of the end of the tenancy dated January 31, 2019, in an email with a vacancy effective date of February 28, 2019. The Agents acknowledged in the hearing that they accepted this form of notice of the end of the tenancy.

The Parties agreed that the Tenant gave the Landlord her forwarding address by writing it on the condition inspection report ("CIR") after the move-out condition inspection on February 28, 2019.

In her written submission, the Tenant said the following:

> On the day of the move-out inspection [C.F.] wrote down my new address to mail me the security deposit check. On March 23, 2019, over 3 weeks after I moved out, I sent an email to [C.F.] asking for an update regarding my security deposit that I have not received, neither received any email or call from them. She told me she would check with the head office and then contact me after. On March 27, 2019, [C.F.] sent me an email saying that 'you were advised that the cost to repair the damaged floor may total $1,100.00 . In fact, the attached invoice from [flooring company] shows the actual cost was $2,514.75 . Head office will contact you directly when they have decided if you will be further invoiced for the $1,662.25 (difference between the [flooring company] invoice amount and your security deposit.)'
>
> [reproduced as written]

The Landlord submitted a copy of the last page of the CIR, in which the Tenant checked a box and signed to acknowledge: "I agree that this report fairly represents the condition

of the rental unit and agree with the charges noted above." The document noted that the Tenant had paid a security deposit of $852.50 on June 6, 2015, and that the repairs to the rental unit amounted to $1,100.00.

In the hearing, the Agent said:

> In the lease we clearly say that tenants with oak floor are to protect it by putting pads under chairs. We provide those pads to the tenants. This was clearly pointed out at the move-in inspection. [The Tenant] was also in another building and knows about the condition of the floor when you did the move out. We attached the photo of those two deep gouges in the living room. The Tenant's foot is right beside it. [The Tenant] said it had happened on her move–in , but she didn't contact the company. If we had learned that a moving company had done the damage, you must make a claim from the moving company and charge them for the damage. She said it was done by [a furniture company]. There's nothing I could do as a Landlord. I couldn't assist her in making a claim - going after the moving company three years later.
>
> The Tenant has signed off and agreed to this and should have known that her security deposit didn't cover that amount. The repairs – the real cost of the repairs - was $2514.75, minus the $852.50 deposit, meaning the Landlord has absorbed $1662.00.

The Tenant also claimed $400.04 in moving expenses, because she said in her written submission that she felt "all the harassment and stress caused by the building managers are the only reasons why I started seeking for a new place as soon as I could…. I have spent CAD$400.04 with moving-out costs."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that February 28, 2019, was the last day of the tenancy and also the day on which the Tenant provided her written forwarding address to the Landlord.

I acknowledge that the Tenant signed the outgoing CIR, however, signing this report does not necessarily indicate agreement with the Landlord deducting from the security

deposit. Rather, it indicates agreement with the condition of the rental unit noted on the CIR. I find this signature does not constitute the Landlord having received the Tenant's written permission to deduct from the security deposit for damage to the rental unit pursuant to section 38(4)(a), which states:

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> > (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

RTB form number 27, Condition Inspection Report, has a section at the bottom, in which a tenant can consent to the landlord deducting from the security deposit, as follows:

> I, (Tenant's name) _____ agree to the following deductions from my security deposit and/or pet damage deposit:
>
> Security Deposit: _____ Pet Damage Deposit:_____
> Date (dd/mm/yy): _____ Signature of Tenant: _____

However, there is no evidence that the Tenant signed such an agreement in the Landlord's CIR or elsewhere. Accordingly, I find on that the Tenant did not consent to the Landlord deducting anything from the security deposit in this matter.

Section 38(1) of the Act states the following:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Landlord was required to return the Tenant's $852.50 security deposit within fifteen days of February 28, 2019, namely by March 15, 2019, or to apply for dispute resolution claiming against the security deposit, pursuant to Section 38(1). The Landlord provided no evidence that they returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with their obligations under Section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant **$1,705.00** from the Landlord in recovery of double the security deposit.

In terms of the Tenant's claim for recovery of her moving costs of $400.04, nothing in the Act or regulations allows for recovery of moving costs. The Tenant provided detailed evidence of the Agents' communications with the Tenant throughout the tenancy, which included commentary on the Tenant's choice of decor. If a tenant experiences what she believes is ongoing harassment by a landlord or their representative during a tenancy, the tenant can apply for dispute resolution, claiming a loss of quiet enjoyment under section 28 of the Act. However, the Tenant in the case before me did not do this, so I do not have the authority to consider this matter in that context. I dismiss the Tenant's claim for moving expenses without leave to reapply.

Given that the Tenant was successful in his Application, I also award her recovery of the **$100.00** Application filing fee for a total award of **$1,805.00**.

Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of $1,705.00. The Landlord violated section 38(1) of the Act in not returning the security deposit or applying for dispute resolution within 15 days of the end of the tenancy and receiving the Tenant's forwarding address. I award the Tenant double the amount of the $852.50 security deposit, plus recovery of the $100.00 Application filing fee.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$1,805.00**.
This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 19, 2019

Residential Tenancy Branch