Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies to recover her $350.00 security deposit and the filing fee for this application.

All 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.

It was apparent from the written tenancy agreement that the sole landlord in this tenancy is Ms. B.K.

At the start of the hearing the landlord indicated that she was seeking to pursue her own claim against the tenant at this hearing for cleaning and the cost of a lock change. She indicated that a person at the Residential Tenancy Office had told her she could pursue her claim under the tenant's application without making an application herself because the amount she is seeking was less than the deposit she is holding.

While this direction from the Residential Tenancy Office was clearly wrong, the tenant consented to having the landlord's monetary claim dealt with at this hearing, and on that basis it was.

Issue(s) to be Decided

Is the landlord entitled to compensation for cleaning or a lock change? Is the tenant entitled to a doubling of the deposit money as provided for in s. 38 of the *Residential Tenancy Act* (the "*Act*")?

Background and Evidence

The rental unit is a one bedroom basement suite in the landlord's home. The tenancy started in August 2018 for a fixed term ending April 30, 2019. The rent was $700.00 per month. The landlord received and still holds a $350.00 security deposit.

Though she'd paid her rent for the month of April, the tenant was ready to move-out April 17. The parties had discussed conducting a move out inspection on that day but it did not occur. I've heard each side explain why it didn't and I cannot find blame either way.

The move-out inspection ultimately occurred on April 29th with the tenant participating remotely by Facetime. There was some discussion of invoices being sent to the tenant but I determine that the parties did not agree on any figure the landlord might retain from the deposit money. The landlord paid a person $60.00 to clean.

The tenant was still holding her keys and so she mailed them to the landlord by express post the next day and emailed the landlord that they were on the way. The landlord received the express post notice on May 2 and collected the keys on May 3. In the meantime she had rented the premises to a new tenant starting May 1. While the landlord had her own set of keys, she proceeded to buy new locks and hired a handyman to install them on May 1 at a total cost of $301.55.

By an email sent May 21, the tenant gave the landlord her forwarding address.

Analysis

The Landlord's Claim

A tenant's responsibility at the end of the tenant is spelled out in s. 37 of the *Act.* A tenant must leave the rental unit reasonably clean and undamaged but for reasonable wear and tear.

The photos presented by the landlord show that the tenant did leave the premises free of damage and that the premises were reasonably clean but for the stove. I award the landlord $25.00 as the reasonable cost of cleaning the stove.

It is apparent that at the end of April the landlord knew that the tenant was living in a different city and that the tenant's keys were gone from the tenant's possession and in the care of Canada Post express post on their way to her. It would have been perfectly reasonable for her to give her new tenant her own keys and wait the day or two for this tenant's express post.

However, the landlord was not obliged to wait. The tenant was responsible to see that the keys necessary to secure the rental unit were returned to the landlord at the end of the tenancy on April 30 and she didn't. She is responsible for the cost to secure the premises. There is no argument that the landlord should only have had the rental unit rekeyed. I therefore grant the landlord the amount of $301.55 under this item.

The Security Deposit

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant has provide the landlord with her forwarding address in writing, the landlord has a fifteen day period in which she must either repay the deposit money or make an application claiming against the deposit money.

In the event the landlord fails to do either thing within the fifteen day period, the *Act* penalizes the landlord by imposing a doubling of the deposit money being held at the end of the tenancy.

The purpose of s. 38 is to punish a landlord who unilaterally decides to keep a tenant's deposit money. The deposit money is usually a significant amount and in many cases it is essential for a tenant to have it quickly after the end of a tenancy in order to secure the tenancy of a subsequent rental unit.

In this case the landlord argues that the May 21 forwarding address was in an email and therefore not "in writing" as required by s. 38. While I consider that the *Electronic Transactions Act*, SBC 2011, C 10, section 5 (which provides: "A requirement under law that a record be in writing is satisfied if the record is (a) in electronic form, and (b) accessible in a manner usable for subsequent reference") makes it clear that a forwarding address "in writing" may be provided by email, the question is rendered moot. The tenant served the landlord with her application for dispute resolution. It provides an address to which any material may be sent; a forwarding address. The landlord still failed to either repay the deposit money or make application to claim against it within fifteen days after that, or at all.

In result, the landlord has breached s. 38 of the *Act* and must account to the tenant for $700.00, being double the deposit.

However, the tenant has not asked for a doubling of her deposit money in her application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" indicates that an arbitrator is to impose the doubling penalty even when not requested in an application unless the tenant in her application or at hearing specifically declines it. The tenant here has not declined the doubling in her application. The question was put to her at the hearing and she chose not to decline the doubling.

The tenant is entitled to recover double the deposit money. She is also entitled to recover the $100.00 filing fee for this application.

Conclusion

The tenant is entitled to an award totalling $800.00. The landlord is entitled to an award totalling $326.55. The tenant will have a monetary order against the landlord Ms. B.K. for the difference of $473.45.

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: September 12, 2019

Residential Tenancy Branch