Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINES APARTMENTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT MNSD**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenant attended the hearing and the landlord attended the hearing represented by the resident manager, CC ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution stated there were no concerns with timely service of documents. The landlord did not provide any documentary evidence in advance of the hearing. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the tenant entitled to compensation of a security deposit (doubled)?

Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenancy began on August 1, 2018 with the tenant in a different rental unit. At that time, a security deposit of $425.00 was collected by the landlord which is still being held. The tenant moved into the subject rental unit and rent was set at $925.00 in that unit. A condition inspection report was done on

commencement of the tenancy and at the end of the tenancy. The landlord acknowledges there was no significant damage to the rental unit and agreed to return the full security deposit to the tenant as noted on the condition inspection report filled out at the end of the tenancy and provided as evidence by the tenant.

The landlord testified the person who moved into the rental unit after this tenant only stayed a few days. When sending that person their security deposit of $149.19, an error was made by the owner of the building and this tenant received that person's $149.19 instead of the full $425.00 she was expecting. The landlord further testified that the building owner contacted the tenant by phone on July 19th to explain the error and to get the tenant's proper forwarding address to send her the proper cheque. The landlord testified they were provided with up to five (5) different forwarding addresses from the tenant and they were unsure which was correct.

The tenant testified that the reason she provided the landlord with contradictory forwarding addresses was because her next address was a brand-new building and the postmaster had reassigned the postal code to her next address. The secondary notices provided were to advise the landlord of the proper postal code; the actual street address had never changed. The tenant testified that she had provided the landlord with notice of her forwarding address some time at the end of May, however no copies of the tenant's written notification of forwarding address was provided as evidence in these proceedings. During the proceedings, the tenant orally read her forwarding address to the landlord to confirm they had the right one.

The tenant disputes the landlord's assertion that he contacted her on July 19th, it wasn't until August that she received his call. By that time, she had been inconvenienced and understood she is entitled to a doubling of the security deposit in accordance with the *Residential Tenancy Act.*

During the hearing, I sought clarification from the tenant on the party she had named as a landlord in this proceeding. The tenant confirmed with me that she was confident the named landlord is the proper party to be named although she ensured she served the documents directly to the company and not the resident manager who she deemed not responsive to her communication. In her evidence, the tenant provided a company search of the landlord's name which indicates the proper legal name is *"The [name withheld for privacy] Apartments Ltd."*

Analysis

Residential Tenancy Branch Policy Guideline PG-43 specifically addresses Naming Parties. Part A of the PG-43 provides:

> LEGISLATIVE FRAMEWORK
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> The Residential Tenancy *Act* and the Manufactured Home Park Tenancy *Act* (the Legislation)1 require Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings. Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named. **If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.**
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> Part C of the guideline states:
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> BUSINESSES AS PARTIES
> In order to enforce Residential Tenancy Branch orders, the applicant must use the correct name of a respondent who operates as a business. If the party is a limited liability company or a registered corporation, then the full legal name of the company should be used on the application, and include the designations such as Incorporated, Inc., Limited, Ltd., Corporation or Corp. (and/or the French language equivalents).
>
> …
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> It is up to the applicant to ensure that a party is properly named to ensure an enforceable order. Where the business is not properly named, for example Garden Apartments (only), the director may dismiss the application with leave to reapply unless the other party is present and consents to an amendment, or the director may issue the order using the name set out in the application.

In the matter before me, the tenant improperly named her landlord and did not seek to amend the landlord's name at any time during the hearing. For this reason, the tenant's application should be dismissed with leave to reapply.

Further, the tenant seeks a doubling of the return of her security deposit pursuant to section 38(6) of the *Act* for the landlord's failure to comply with section 38(1) which states:

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,

   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.

In order to succeed in her claim for a doubled security deposit, the landlord must satisfy me she provided her forwarding address in writing. In this case, the tenant did not provide me with sufficient evidence of doing so. She testified it was provided sometime at the end of May however she was not sure the exact date. In light of this, I find that the landlord was not made aware of the tenant's forwarding address until this hearing on October 18, 2019 in accordance with section 71 of the *Act*.

Conclusion

The tenant's application is dismissed with leave to reapply. The tenant can reapply if the landlord fails to file an application for dispute resolution to claim against the security deposit or return it in full within 15 days of today's date.

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: October 18, 2019

Residential Tenancy Branch