



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Newton Kinsmen Housing
Society and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

MNSD, MNDL, FFT, FFL

Introduction

This hearing dealt with monetary cross applications. The tenant applied for return of the security deposit and key deposit. The landlord applied for compensation for damage to the rental unit and cleaning.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Service of documents

The tenant testified that she gave her proceeding package to the operator of a daycare located on the residential property sometime between November 8 and 14, 2019.

The landlord's agent acknowledged she received the tenant's proceeding package from the daycare operator even though the daycare operator is not an agent for the landlord. The landlord pointed out that the tenant's Notice of Dispute Resolution Proceeding is dated November 18, 2019 and doubted it was given between November 8 and 14, 2019 as submitted by the tenant. Nevertheless, the landlord's agent acknowledged receipt of the tenant's proceeding documents in November 2019 and was prepared to respond to the tenant's claim. Although the tenant did not serve the landlord in a manner that complies with the Act, given the landlord's preparedness to respond to the tenant's claim I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The landlord's agent testified that she provided evidence in response to the tenant's claim that was sent to the tenant via registered mail on February 26, 2020. The landlord's agent testified the registered mail was sent to the tenant at her service address, but it was returned as being unclaimed. The landlord provided the registered mail tracking number which supported the landlord's submission. The tenant explained that she lives in a secured property and often notice cards left by Canada Post or couriers are posted at the front gate or door and are ripped off by other people so that may explain why she did not receive the registered mail notice cards. I described the evidence provided by the landlord, including a copy of a cheque issued to the tenant. The tenant acknowledged she has seen the cheque. Accordingly, I deemed the tenant sufficiently served with the landlord's evidence.

As for the landlord's hearing documents, the landlord's agent submitted that they were sent to the tenant via registered mail on March 5, 2020 and successfully delivered on March 9, 2020. The tenant acknowledged receipt of this package.

2. Amendment of tenant's Application for Dispute Resolution

The tenant had applied for return of the security deposit and key deposit in the single amount. The tenant acknowledged she subsequently received a partial refund of the security deposit and key deposit and she was seeking to have her claim amended to reflect doubling of the security deposit. The landlord's agent indicated she was aware of the doubling provision and was prepared to respond to the tenant's request for doubling of the deposit and the landlord had provided evidence to rebut the tenant's entitlement to doubling. In this circumstance, I amended the tenant's application to indicate a claim for return of double the security deposit and the key deposit.

In filing her Application for Dispute Resolution, the tenant had identified the landlord as the individual identified as the landlord's employee. Both parties consented to amending the style of cause to reflect the landlord as the housing society operating the residential property.

3. Withdrawal of landlord's claims

The tenant's claim for return of double the security deposit and key deposit was heard first since the tenant filed the first Application for Dispute Resolution. After hearing from both parties with respect to the tenant's application I informed the parties of my finding that the tenant was not entitled to any further compensation with respect to return of the

security deposit or key deposit and I was dismissed her Application for Dispute Resolution, without leave to reapply.

After dismissing the tenant's application and upon further consideration by the landlord's agents with respect to the landlord's likeliness to succeed and collect on its claims against the tenant, the landlord withdrew its claims against the tenant. Accordingly, I have also dismissed the landlord's claims against the tenant without leave to reapply without making a determination as to its entitlement to recover losses from the tenant.

In the remainder of this decision, I provide the evidence and analysis with respect to the tenant's claims since the tenant did not withdraw her claim against the landlord and I am bound under the Act to provide her with my findings and reasons for dismissing her claim.

Issue(s) to be Decided

Has the tenant established an entitlement to doubling of the security deposit and return of the key deposit?

Background and Evidence

The tenancy started on March 1, 2011. The tenant was required to pay the subsidized rent of \$318.00 on the first day of every month. The tenancy was set to end on September 30, 2019 pursuant to a notice to end tenancy given by the tenant; however, possession of the rental unit and the keys to the rental unit were returned to the landlord on October 8, 2019.

According to the tenant, she paid a security deposit of \$650.00 and a key deposit of \$50.00 for a total of \$700.00. According to the landlord, the tenant paid a security deposit totalling \$600.00 by way of two installments of \$300.00 on March 1, 2011 and \$300.00 on March 30, 2011. The landlord pointed the tenancy agreement and the ledger in support of the tenant paying \$600.00 for a security deposit by way of two installments of \$300.00. The landlord acknowledged receipt of a key deposit in March 2018 in the amount of \$50.00. The tenant did not have any other evidence to corroborate her position that she had paid a security deposit totalling \$650.00, claiming she did not keep documentation from 10 years prior, and she stated she was willing to accept for purposes of this dispute that the security deposit was \$600.00.

The tenant submitted that she orally provided her forwarding address on the landlord's answering machine on October 1, 2019 and gave it to the landlord's agent in writing on October 25, 2019 according to her entry in her calendar. The landlord's agent testified that she received the tenant's forwarding address in writing on October 29, 2019 and pointed to the tenant's letter that is dated October 29, 2019 in support of the landlord's position. The tenant could not explain why her letter is dated October 29, 2019 but her calendar indicates she went to the property on October 25, 2019.

The tenant testified that she received a refund cheque dated November 1, 2019 in the amount of \$650.00 on November 14, 2019 via regular mail. The landlord's agent testified that upon receiving the tenant's forwarding address on October 29, 2019 she requested a cheque be issued to the tenant in the full amount of the security deposit and key deposit and a cheque was issued on November 1, 2019 and put in the regular mail system the same day. The landlord provided a copy of the front and back side of the refund cheque and pointed to the back side of the cheque showing it was taken to a financial institution and cashed or deposited on November 8, 2019. The tenant conceded that she endorsed the cheque to another person and the cheque may have been cashed on November 8, 2019 as indicated on the back side of the cheque.

The tenant argued the landlord ought to have sent a refund cheque to her within 15 days of the date she orally provided the landlord with her forwarding address, not the date she delivered the letter with her forwarding address.

Analysis

The first issue to determine is the amount of the security deposit collected by the landlord as the parties were in dispute as to the amount the landlord collected for a security deposit. It was undisputed that the tenant paid, and the landlord collected, a key deposit of \$50.00.

The tenant did not provide any corroborating evidence that she paid \$650.00 for a security deposit and the tenant conceded that she does not have any records or documentation that goes back to the start of the tenancy. The landlord's records show the tenant paid a total of \$600.00 by way of two different documents: the tenancy agreement and the ledger which provides further detail that the \$600.00 security deposit was received by way of two installments of \$300.00. Based upon the evidence before me, I find the landlord's evidence to be sufficiently reliable and supported. Accordingly, I find the security deposit paid by the tenant and collected by the landlord was \$600.00.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends, or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenant argued the landlord ought to have issued a refund cheque upon receiving her voice mail message on October 1, 2019; however, that position is not consistent with section 38(1) of the Act and I proceed to consider whether the landlord met its obligation to administer the security deposit in manner that complies with section 38(1) of the Act.

In this case, the parties provided differing testimony as to when the landlord received the tenant's forwarding address in writing. The letter the tenant delivered to the landlord with her forwarding address is dated October 29, 2019 and I find the tenant's letter supports the landlord's position that the forwarding address was received, in writing, on October 29, 2019. Therefore, I find the landlord was in receipt of the tenant's written forwarding address on October 29, 2019.

The parties provided opposing testimony as to when a refund cheque was issued and sent to the tenant. The tenant testified that it was received on November 14, 2019; however, the cancelled cheque indicates it was received by the tenant no later than November 8, 2019 since that is the date the cheque was taken to a financial institution to be cashed or deposited. Therefore, I find the landlord sent the tenant a refund cheque within 15 days of receiving the tenant's written forwarding address.

In light of the above, I find the landlord met its obligation under section 38(1) of the Act and the tenant's request for double the security deposit is dismissed. Since the tenant has received a full refund of the security deposit and the key deposit, the tenant's application is dismissed in its entirety.

Conclusion

Both of the applications before me are dismissed, without leave to reapply.

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: March 31, 2020

Residential Tenancy Branch