Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and compensation for other damages or loss under the Act, regulations or tenancy agreement. 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.

At the outset of the hearing, I confirmed that the parties had exchanged their respective documents and materials and I admitted them into evidence.

I explained the hearing process to the parties and provided the parties the opportunity to ask questions.

Issue(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit?
2. Has the tenant established an entitlement to compensation for other amounts claimed as compensation for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy started on October 1, 2017. The rent was initially set at $3,000.00 per month. The tenant paid and the landlord accepted a security deposit in the amount of $3,000.00. The parties provided opposing submissions as to which party insisted upon the excessive security deposit; however, it was unnecessary to make that determination and I declined to hear further submissions on that matter.

At the end of the tenancy the tenant was paying rent of $3,100.00 per month. The tenancy ended on September 30, 2019.

The landlord did not prepare a move-in or move-out inspection report.

The parties provided consistent testimony that the tenant did not authorize the landlord to retain any part of the security deposit in writing and the landlord continues to hold the security deposit.

The parties were in dispute as to whether the tenant provided a forwarding address to the landlord in writing. When I asked the tenant when she provided her forwarding address, she initially stated it was provided on or before September 30, 2019. Then the tenant testified that it was sent in an email she gave the landlord when she gave notice to end tenancy on June 30, 2019. Then the tenant said it was with her notice to end tenancy that was a document that she put in the mailbox at the property sometime in August 2019. The tenant explained that the landlord's service address was listed as the rental unit address even though the landlord did not reside at the rental unit. The landlord still had a key for the locked mailbox and would pick up her mail from the mailbox from time to time once the tenant would notify the landlord that there was mail there for her. The tenant testified that the landlord picked up her notice to end tenancy from the mailbox within the week of the tenant putting it there.

The tenant did not provide a copy of a notice to end tenancy she claims to have put in the mailbox in August 2019. Rather, the tenant provided a copy of email correspondence between the parties on September 23, 2019. In the email the tenant indicates she is going to place a signed copy of the June 30, 2019 email in the mailbox, but the June 30, 2019 email does not include a forwarding address. The September 23, 2019 email does provide an address to send the security deposit; however, that address is different than the address appearing on the tenant's Application for Dispute Resolution.

The landlord denied that she received a written notice to end tenancy in the mailbox. Rather, the landlord testified that the tenant gave her notice to end tenancy via email. The landlord submitted that the first time she received a forwarding address in writing was when she received the tenant's Application for Dispute Resolution. The landlord acknowledged that she had not yet filed an Application for Dispute Resolution to make a claim against the security deposit but that she intends to make a claim for unpaid or loss of rent for October 2019.

The tenant confirmed that her forwarding address is the service address that appears on her Application for Dispute Resolution.

During the hearing, I informed the parties that I was not satisfied the tenant had sufficiently proven that she had served the landlord with her forwarding address in writing in a manner that complies with section 88 of the Act. However, in recognition that the landlord received the tenant's address in writing on her Application for Dispute Resolution, that the tenant confirmed to be her forwarding address during the hearing, the landlord was put on notice that she has 15 days from the date of this hearing (by March 23, 2020) to either refund the security deposit to the tenant or file an Application for Dispute Resolution to make a claim against it. This was repeated to the landlord several times.

The landlord attempted to introduce evidence that the tenant breached a fixed term lease and the landlord suffered loss of rent; however, I did not permit further submissions on that matter since the landlord has not made a claim yet and that matter is not before me.

In addition to return of the security deposit, the tenant requested compensation for purchasing drapery for the rental unit, repairing the dishwasher, installing new shower heads, loss of use of the rental unit after 1:00 p.m. on September 30, 2019, and loss of use of the dishwasher.

With respect to purchasing drapery, the tenant submitted that shortly after the tenancy started, she purchased drapery for the living room windows as there was none despite the tenancy agreement providing for drapery. The tenant stated she got the landlord's permission to install her own drapery. The tenant acknowledged that she did not seek recovery of the cost of drapery from the landlord until after the tenancy ended and that she took the drapery with her when the tenancy ended. I informed the parties that I was not satisfied that the tenant took reasonable steps to mitigate her losses, as required under section 7 of the Act, and I dismissed her claim for drapery costs summarily without hearing a response from the landlord.

The tenant withdrew her request for compensation for repairing the dishwasher, installing new shower heads and loss of use of the rental unit after 1:00 p.m. on September 30, 2019. I did not grant the tenant leave to reapply for these claims.

The tenant proceeded to seek compensation for loss of use of the dishwasher. The tenant testified that in June 2019 she notified the landlord that the dishwasher was not working. In response the landlord attended the unit to look at the appliances and left. The tenant assumed the landlord was going to replace the dishwasher but that did not happen despite reminding the landlord about the matter. The tenant requests compensation of $172.22 per month for the months of July 2019, August 2019 and September 2019. The amount requested is based on the monthly rent and divided by the number of rooms and appliances provided under the tenancy agreement.

The landlord acknowledged that the tenant complained about the dishwasher in June 2019 and her response was to view the appliances so as to determine the brand of the appliances. The landlord sought out another dishwasher of the same brand, but she could not locate one so she did not replace the dishwasher. Nor, did she attempt to repair the dishwasher because the tenant told her it was irrepairable. The landlord explained that she ended up moving into the rental unit in November 2019 and removed the dishwasher in January 2020.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

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.

In this case, the tenancy ended on September 30, 2019 and it was undisputed that the tenant did not give the landlord written authorization to retain the security deposit. However, the parties were in dispute as to whether or when the tenant served the landlord with her forwarding address in writing.

The tenant did not produce a copy of the notice to end tenancy she claims to have placed in the mailbox in August 2019 and the landlord denied receiving such a notice. When I look at the tenant's evidence, it would appear she intended to place a signed copy of the June 30, 2019 email in the mailbox on or after September 23, 2019 but the email the tenant was going to print and sign did not include a forwarding address.

Therefore, I find the tenant did not satisfy me that she gave the landlord a forwarding address by way of a document placed in the mailbox as she claimed.

The September 23, 2019 email the tenant sent to the landlord does include an address; however, sending an email is not recognized method of serving a document under section 88 of the Act. Documents to be given to the other party must be served in accordance with section 88 of the Act and section 88 does not provide for service by email.

It is undeniable that the tenant did provide a service address to the landlord when she served her Application for Dispute Resolution to the landlord via registered mail in October 2019 but at the time of making the Application for Dispute Resolution the tenant was premature in seeking return of the security deposit.

Since the tenant confirmed the service address appearing on her Application for Dispute Resolution is her forwarding address during the hearing, the landlord was put on notice that she must either: refund the security deposit to the tenant or make a claim against it by filing a Landlord's Application for Dispute Resolution within 15 days of the date of the hearing, or March 23, 2020.

As for the amount of the security deposit, I find the amount paid and accepted exceeded the limitation imposed under section 19 of the Act. Section 19 of the Act sets a limit on the amount of the security deposit and what happens if the limit is exceeded. Below, I have reproduced section 19:

> **Limits on amount of deposits**
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> **19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
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> (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Since the monthly rent was originally set at $3,000.00 per month, the security deposit the landlord may accept could not exceed $1,500.00. The tenant paid and the landlord accepted $3,000.00 as a security deposit. Accordingly, the tenant overpaid the security deposit by $1,500.00 and she is entitled to recover the overpayment. Therefore, I find

the tenant entitled to return of the overpayment of $1,500.00 in any event since the landlord should never have accepted this amount and I provide the tenant a Monetary Order that includes recovery of the overpayment.

Having awarded the tenant recovery of the $1,500.00 overpayment, there remains $1,500.00 held in trust as a security deposit that must be administered in accordance with the Act. It is this remaining balance that the landlord must either refund or make a claim against by March 23, 2020 otherwise the tenant may make another claim for return of double the security deposit.

With respect to the tenant's claim for loss of use of the dishwasher I find as follows. The tenancy agreement provides that the rent includes a dishwasher. It was undisputed that the dishwasher stopped working in June 2019 and the tenant notified the landlord of this and the landlord attended the rental unit to determine the brand of the appliances with the intention of sourcing a replacement dishwasher with the matching brand. It was also undisputed that the landlord did not repair or replace the dishwasher during the remainder of the tenancy. I find the amount of time that elapsed from the time the tenant notified the landlord through to the end of the tenancy, over three months, to be unreasonably long and the tenant suffered a loss of use of an appliance that was beyond temporary. Therefore, I find the landlord failed to provide the tenant with use of the appliance that was included in the monthly rent and the tenant is entitled to compensation for the loss.

The tenant requested compensation of $172.22 per month for three months. The basis of the claim was determined by dividing the monthly rent by the number of rooms and appliances provided with the rental unit. Considering the monthly rent was $3,100.00, I calculate the tenant's claim to be equivalent to 5.5%. I find that claim to be within reason and I grant the tenant's request to recover $516.66 for loss of use of the dishwasher.

The tenants claim had some merit and I award the tenant recovery of the $100.00 filing fee she paid for her Application for Dispute Resolution.

In light of the above, I provide the tenant with a Monetary Order in the sum of $2,116.66 [$1,500.00 for the overpaid portion of the security deposit, $516.66 for loss of use of dishwasher, plus $100.00 for recovery of the filing fee] to serve an enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the sum of $2,116.66 to serve and enforce upon the landlord.

The landlord continues to hold a security deposit of $1,500.00 and the landlord must either refund that amount to the tenant or make an Application for Dispute Resolution to retain it by March 23, 2020. If the landlord fails to do so, the tenant may make another Application for Dispute Resolution seeking doubling of the $1,500.00 security deposit.

The balance of the tenant's claims was either dismissed or withdrawn, without leave.

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 10, 2020

Residential Tenancy Branch