



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and had the opportunity to 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 the landlord received the tenant's hearing documents by registered mail sent on December 8, 2019 and successfully delivered on December 9, 2019.

I confirmed that the landlord had not provided any materials in response to the tenants' claim and the landlord intended to provide her position orally during the hearing.

I explained the hearing process to the parties and permitted the parties to ask questions about the process.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?
Award of the filing fee.

Background and Evidence

The parties provided consistent submissions that the tenancy started on July 1, 2019 and the tenants paid a security deposit of \$600.00. It was agreed that the tenants sent a forwarding address to the landlord in writing, via registered mail, on October 15, 2019 and the landlord received the tenants' forwarding address on October 22, 2019. It was further agreed that the landlord did not obtain the tenant's written authorization to retain

the security deposit; that the landlord has not yet refunded the deposit; and, the landlord did not make a claim against the security deposit by filing a Landlord's Application for Dispute Resolution.

The tenant testified the landlord did not prepare a move-in or move-out inspection report. The landlord stated she believes she had partially completed a move-in inspection report and did not refute that a move-out inspection report was not prepared.

The tenant submitted that the tenancy ended on September 30, 2019. The landlord stated that she "assumes" the tenants vacated the rental unit "sometime around the end of September 2019" but that neither party had given a notice to end tenancy. Rather, the landlord testified that she found the rental unit vacant when she went to the rental property to retrieve the lawnmower on or about October 15, 2019.

The tenant submitted copies of text messages whereby on August 22, 2019 the landlord informs the tenant they are listing the house for sale and if the purchaser wants to occupy the rental unit the landlord will give the tenants two months of notice. The tenant responds on August 27, 2019 to inform the landlord they will be vacating the rental unit by September 30, 2019. On September 24, 2019 the tenant asks what date/time the move-out inspection will be done. On September 26, 2019 the tenant asks if the landlord had been to the property. On September 27, 2019, the landlord responds that they will not worry about doing a move-out inspection since "its not my house anymore" and the landlord had been to the property to retrieve the lawnmower. Also on September 27, 2019, the tenant asks if the landlord would just be sending them their security deposit to which the landlord responded "yep". After the tenancy ended, the tenant sent a number of follow up emails to the landlord concerning return of the security deposit and there were no more responses from the landlord.

I asked the landlord about those text messages since they appeared inconsistent with her testimony. The landlord responded that those text messages were not sent to her or from her. I read the phone number associated to the text messages and she said that phone number was being used by her husband who was also an owner of the house. The tenant stated that they were provided only one phone number for the landlord and that was their ordinary way of communicating. Also I noted the tenant referred to the landlord by her first name in the text messages and the person responding did not otherwise indicate the tenant was communicating with someone other than the landlord.

As far as continuing to hold on to the security deposit, the landlord stated that she held it because the rental unit was vacant for the month of October 2019 and the property was set to be transferred to the new owners on November 1, 2019 (although it was eventually transferred a few days later). I informed the parties that this proceeding was not to make a determination as to whether the landlord is entitled to recover unpaid and/or loss of rent from the tenants since the landlord has not made such a claim. Rather, the parties were informed that the landlord has lost the right to make a claim against the security deposit as her time limit for doing so was within 15 days of receiving the tenant's forwarding address. However, the landlord still has the right to pursue the tenants for losses as she is still within the statutory two year time limit for doing so.

Analysis

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.

A tenancy ends in one of the circumstances described under section 44 of the Act. Section 44(1)(d) provides that a tenancy ends when a tenant vacates a rental unit. The tenant testified that they vacated the rental unit on September 30, 2019 and that submission is consistent with the text message evidence. The landlord testified that she assumes the tenants vacated the rental unit on or about that date but that she did not confirm the unit was vacant until on or about October 15, 2019. I found the tenant's evidence consistent and credible and I find I prefer the tenant's submission that the tenancy ended on September 30, 2019. In any event, the landlord received the tenant's forwarding address in writing on October 22, 2019 and this is the critical date for determining whether the landlord complied with section 38(1) since it is the later date.

Having found the landlord received the tenant's forwarding address on October 22, 2019 the landlord had 15 days from that date to either: refund the security deposit to the tenants, file an Application for Dispute Resolution to make a claim against it; or, get the tenant's written authorization to retain the security deposit. Since the landlord did none of these things, I find the landlord violated section 38(1) of the Act and the landlord must now pay the tenants double the security deposit as provided under section 38(6) of the Act.

In light of the above, I grant the tenants' request for return of double the security deposit, or \$1200.00. I further award the tenants recovery of the \$100.00 filing fee. The tenants are provided a Monetary Order in the sum of \$1300.00 to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the sum of \$1300.00 to serve and enforce upon the landlord for return of double the security deposit and recovery of the filing fee.

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: May 05, 2020

Residential Tenancy Branch