Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the security deposit in the amount of $1,700.00. The Tenant applied for a second monetary order for damage or compensation under the Act in the amount of $1,081.00 from the Landlord, which is the second application number; however, she withdrew this second claim during the hearing.

The Tenant, the Landlord, and an agent for the Landlord M.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness, C.M., for the Landlord ("Witness") was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2019, with a monthly rent of $1,700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $850.00, and no pet damage deposit. The Parties agreed that the Landlord returned the Tenant's $850.00 security deposit, but the Tenant stated that the Landlord owes her double this amount, pursuant to the Act.

Early in the hearing, the Parties agreed that the last day of the tenancy was November 30, 2019. At this time, the Tenant also said she had provided the Landlord with her written forwarding address on November 30, 2019, by leaving a piece of paper with her address on it with the keys that she left in the rental unit. Later in the hearing, the Tenant said that the Parties did not do a move out inspection with a condition inspection report, but if they had, that she would have written her forwarding address on that form.

The Parties acknowledged that they had a previous RTB hearing, in which the Tenant disputed the Landlord's notice to end the tenancy. However, the Tenant agreed that she had not attended this hearing. She said there were some confrontations between the Parties, and that the rental unit was "not a good place for us to be."

The Tenant said: They had my email,and they're saying they had no way of contacting me.

The Agent said:

> I was living with a woman named [C.] who worked at the City, and who was helping [the Tenant]; but I never had any contact with her by email or knowledge of her email until her dispute notice came in the current matter. The only email I've had with her was on the evening of May 3. The rest of this was pure nonsense, so that's just not true.
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> The move in, move out [condition inspections] were not done on the form, but they were conducted, pictures were taken, matters were discussed, except it was not recorded on a form.

She talked about missing mail being forwarded to her. We've never sent anything to her except the damage deposit. She said she should have got the cheque at the time that she left, but there's no requirement to do that. There was no way to give it to her, until we had done a full inspection. There were a lot of problems with the suite, but [the Landlords] didn't want to have anything to do with her, so they just gave [the security deposit] to her.

If the paper had been left behind, then she should have mentioned it; there should have been something there. There's no air of reality to what she is saying.

Her address was not in her application to cancel the [One Month Notice to End Tenancy for Cause], but we looked for it. I'm not sure where it is. It's not something that we recalled having. We didn't have an email address.

I asked the Parties for their last statements at the end of the hearing, and the Tenant said:

First, I wanted to clarify re communication with email. I was suggesting that they had the forwarding address on November 30th. The communications were between City and the [Agent]. It's true that I only emailed. Still, it's another way to get my address and reach me. Also, the Landlord had the [City] person's email address, as a result of the previous hearing. [C.] had my email address.

The Agent said:

I'll address the last revelation; the story keeps changing. I had communicated with [C.] a few times prior to the arbitration going ahead on the [previous matter]. What happened was, I had not heard anything from [C.]. The current notices were received by [the Landlord] and I emailed [C.], and asked if she knew anything about this. That was in December. I got a response from [C.] saying, 'I've had nothing to do with [the Tenant] for many months now.'

It is not our job to track her down to find her next address. The obligation is on the Tenant and the Tenant didn't provide it until we got the dispute notice. From [C.], I wouldn't have been able to find her anyway. This seems to be a bit of a shakedown to get $850.00 out of the Landlord. This has been a horrible mistake from beginning to end. And everything that has been alleged doesn't fit the pattern, doesn't make sense. There's no substantiation that they would owe her twice the deposit. They just paid it to try to get rid of her.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the standard of proof and the burden of proof in this administrative hearing:

> **Rule 6.6 The standard of proof and onus of proof**
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> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

The Tenant, as Applicant, has the burden of proof on a balance of probabilities in this hearing.

The date a tenancy ends and the date on which a tenant provides the landlord with her forwarding address in writing are critical dates regarding a security deposit. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit.

The Landlord was required to return the Tenant's $850.00 security deposit within fifteen days of the later of November 30, 2019, and the date on which they received the Tenant's written forwarding address.

I find that the Parties agreed that the tenancy ended on November 30, 2019; however, they disagreed on whether the Tenant provided them with her forwarding address in writing.

I find that the Tenant's evidence that she provided the Landlord with her written forwarding address by leaving it in the rental unit with the keys on November 30, 2019, is lacking reliability. The Tenant also said that she would have written her address down on a condition inspection report, if the Parties had completed one at the move-out inspection. The Tenant did not indicate why or how she had a copy of her forwarding address on a piece of paper handy, in case she needed it. The Landlord's evidence is that the Tenant did not tell them about the forwarding address, nor did they did find a piece of paper with the address in the rental unit after the Tenant left.

Further, the Tenant insisted that they had a way of contacting her to obtain her forwarding address by email. She did not indicate that they had her email address, but that they could have contacted someone at the City who had assisted her in earlier matters. However, it is not a landlord's obligation to find or contact a tenant for the tenant's forwarding address, once the tenancy is over. Rather, section 39 of the Act states that "…if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

> (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
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> (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Pursuant to section 39, I find it was the Tenant's obligation to give the Landlord her forwarding address in writing, so that the Landlord may return the security deposit to the Tenant in a timely manner. Based on all the evidence before me overall, I find on a balance of probabilities that the Tenant did not provide the Landlord with her forwarding address in writing, pursuant to the Act. Despite this, I find that the Landlord returned the Tenant's $850.00 security deposit, based on the address in this Application, which is not

an appropriate way for a tenant to provide her address to a landlord, pursuant to the Act.

Based on the evidence before me, and on the Act, I dismiss the Tenant's Application without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application for the return of double the security deposit from the Landlord, as the Tenant provided insufficient evidence that she gave the Landlord her forwarding address in writing, pursuant to the Act.

The Tenant withdrew her subsequent application for a monetary order for damage or compensation under the Act, which is the second file number noted in this Decision.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 04, 2020

Residential Tenancy Branch