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. A participatory hearing was held, via teleconference, on June 8, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord's agent attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of $662.50 and that the Landlord still holds this amount. The parties also confirmed that the Tenant moved out of the rental unit on March 31, 2020. The Landlord confirmed receipt of the Tenant's forwarding address in writing on March 31, 2020. The Landlord stated that the Tenant provided it to her when she showed up around 1pm on March 31, 2020, to do the move-out inspection. The Landlord confirmed she has not filed an application against the deposit, and she has not returned the deposit because, in her view, the Tenant extinguished her right to the return of the deposit by failing to participate in the move-out inspection.

The Tenant is seeking the return of her deposit, in full.

Both parties confirmed that a move-in inspection was completed, as per the condition inspection report, on October 31, 2019. The parties do not agree with respect to the move-out inspection. The Landlord provided copies of emails she had with the Tenant leading up to the end of the tenancy. The parties routinely used email as a means to communicate and were not averse to communicating in this manner. The Tenant confirmed that the Landlord offered the first opportunity to do a move-out inspection via email sent on March 21, 2020. The Landlord suggested the parties meet in the morning of March 31, 2020, since the Tenant was scheduled to move out by 1pm that date.

The Tenant responded on March 24, 2020, stating that she believed she would still be cleaning in the morning of March 31, 2020, but she would be done by 1pm. The Tenant offered to conduct the move-out inspection on March 31, 2020, at 1pm.

On March 31, 2020, the Landlord confirmed via email, and stated that "1pm on March 31 to do the move-out inspection works for me", followed up with "I will see you at 1pm on March 31". The Tenant does not dispute getting this email confirming the date and time.

The Tenant stated that she was still moving the last of her things when the Landlord arrived around 1pm. The Landlord stated that the Tenant began yelling at her when she showed up at 1pm to do the move-out inspection. The Landlord stated that the Tenant refused to walk through the unit with the Landlord and stated it was because of COVID-19. The Landlord stated that the Tenant never raised this as an issue before, via email, and appeared to be okay with doing a walk-through leading up to the end of the

tenancy. The Landlord proceeded to conduct the inspection without the Tenant, as she left and said she didn't want to participate.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on March 31, 2020. The Landlord confirmed that she got the Tenant's forwarding address in writing this same day, when she personally attended the rental unit while the Tenant was moving out.

Pursuant to section 38(1) of the Act, the Landlord typically has 15 days from receipt of the forwarding address in writing/end of the tenancy (whichever is later) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. However, section 38(1) of the Act does not apply if the Tenant breached section 38(2) of the Act. Section 38(2) reads as follows:

> *(2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1)* [tenant fails to participate in start of tenancy inspection] *or 36 (1)* [tenant fails to participate in end of tenancy inspection]*.*

In this case, the issue is whether or not the Tenant has extinguished her right to the return of the deposit by failing to participate in the end of tenancy inspection, pursuant to section 36(1). This section reads as follows:

> ***Consequences for tenant and landlord if report requirements not met***
>
> ***36*** *(1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> *(a)the landlord complied with section 35 (2) [2 opportunities for inspection], and*

(b)the tenant has not participated on either occasion.

In this case, it appears the situation was complicated by the COVID-19 pandemic, and the Tenants concerns over being around other people to conduct the move-out inspection of the rental unit. I have considered the email exchanges provided into evidence, and I find that, since the parties had used email as a means of communication leading up to the end of the tenancy, that this is a sufficient way to communicate opportunities for inspection.

I note the Landlord offered the first inspection opportunity for the morning of March 31, 2020, but the Tenant replied to that email, proposing a different time. The Landlord accepted this new proposed time. The Landlord presumed the inspection would occur at the new agreed time, since the Tenant raised no issue with meeting in person at the time they were setting things up. I accept that the Tenant had concerns about doing a walk-through inspection with the Landlord which may be related to COVID-19. However, if the Tenant had concerns over meeting in person, she should have communicated this concern to the Landlord at the time she proposed the alternate time to conduct the inspection. I find there is an aspect of implied consent at play. The Tenant implied that she was okay meeting to do a move-out inspection by proposing a time to do so, and without any indication that she was averse to meeting with the Landlord to do this, especially considering inspections are supposed to be conducted together, in person, generally.

When the Landlord attended the unit at the Tenant's proposed date and time (1pm on March 31, 2020, which was the second time slot the parties had discussed) the Tenant refused to participate. If the Tenant had raised her concerns about meeting, in person, to do the move-out inspection, perhaps accommodations could have been made to enable an inspection to occur at a safe distance or in a modified manner. However, absent this request from the Tenant, I find she failed to participate in the planned inspection. I do not find the Landlord was required to provide further opportunities for inspection, given the Tenant was afforded two different times to do the walk-through. Further, it was the Tenant was the one who proposed the date and time, it was accepted by the Landlord, and then the Tenant failed to participate.

The whole intent behind the requirement for the Landlord to provide at least two opportunities for inspection, and to provide the Tenant a 2nd, final, opportunity is to enable to parties to find a date and time that works for both parties. In this case, at the agreed upon time (1pm on March 31, 2020) it appears the Tenant was present, the

tenancy was over, and the Tenant's reason to not participate was unrelated to the date and time of the inspection arrangement, and was apparently related to not wanting to be present with the Landlord within the rental unit. It is unlikely this issue would be remedied by providing the Tenant with another opportunity for inspection, which would need to occur before new Tenants took occupancy of the rental unit. Given the parties agreed to a date and time (March 31, 2020, at 1pm), which was not honoured, I do not find the Landlord was required to continue offering further opportunities for inspections.

I find the Tenant extinguished her right to the return of her deposit by failing to participate in the move-out inspection, in the manner she did.

I dismiss the Tenant's application for the return of her security deposit. The Landlord may retain the Tenant's security deposit, in full

Conclusion

The Tenant's application, is dismissed, in full, 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: June 08, 2020

Residential Tenancy Branch