



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 an application by the tenant under the *Residential Tenancy Act* (the Act) for:

- an order for the landlords to return the security deposit, pursuant to section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The landlords and the tenant attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant was assisted by advocate SM.

The landlord confirmed receipt of the tenant's application and evidence (the materials) on June 03, 2020. The tenant confirmed receipt of the landlords' evidence on June 04, 2020. I find that the parties were duly served with the materials in accordance with sections 89 and 90 of the Act.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing landlord BP corrected the spelling of her last name. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Preliminary Issue – Correction of the Tenant's Address

At the outset of the hearing the tenant corrected her address. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlords to return double the security deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained to the parties it is their obligation to present the evidence, pursuant to Rule of Procedure 7.4.

Both parties agreed the tenancy started on September 01, 2019 and ended on April 22, 2020. Monthly rent was \$800.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$375.00 was collected and the landlords still hold it in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed the tenancy agreement was signed on February 13, 2020, and on March 13, 2020 a move-in inspection happened. The tenant submitted into evidence a copy of the condition inspection report (RTB form 27) signed only in the move-in inspection section.

Both parties agreed a one month notice to end tenancy for cause (the notice) was served to the tenant on March 24, 2020. The effective date of the notice was April 30, 2020.

The tenant affirmed she was threatened and harassed by the landlords, did not schedule a move-out date and sent the landlords by regular mail a letter with her forwarding address and the rental unit's keys on April 30, 2020. A photograph of the envelope and the letter was submitted into evidence. The tenant is not sure if the landlords received the letter. Both parties agreed the landlord's name and address were misspelled in the envelope.

The landlords affirmed they did not threat or harass the tenant. The landlords affirmed they did not receive the letter or the keys.

The landlords affirmed they tried to schedule a move-out inspection, but the tenant did not answer their phone call. The tenant affirmed she did not receive any phone call from the landlords.

The landlords affirmed they posted a notice of final opportunity to schedule a condition inspection (submitted into evidence) on the tenant's door and conducted a move-out inspection on April 30, 2019 without the tenant. The landlords submitted a copy of the condition inspection report (RTB form 27) dated April 30, 2020, signed in the move-out section only by the landlord. It indicates the possession date of September 01, 2019, move-in inspection date of March 13, 2020 and move-out date of April 30, 2020.

The landlords affirmed they only learned the tenant's forwarding address on June 03, 2020, when they received the registered mail package containing the notice of hearing and the tenant's evidence for this application.

The landlords affirmed they replaced the rental unit's deadbolt and mailbox lock because the tenant did not return the keys. The landlords also affirmed the tenant did not clean the rental unit and damaged the showerhead.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing:

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

Based on the testimony and photographs of the letter and envelope submitted by the tenant, I find the landlords did not receive the tenant's forwarding address in writing.

Therefore, the landlords' obligation under the *Act* to either return the deposit or file an application has not started. I find that this application is premature.

The tenant's forwarding address was confirmed during the hearing (and is recorded on the cover page of this decision).

Section 71(2)(b) of the Act states the director may order that:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

Thus, I order that the landlords are sufficiently served the tenant's forwarding address on June 24, 2020 (the date of this decision). The landlords are cautioned to comply with section 38 of the Act.

The tenant's application for an order for the landlords to return double the security deposit is dismissed with leave to reapply.

As the tenant was not successful in her application, the tenant must bear the cost of the filing fee.

Conclusion

I dismiss the tenant's application for an order for the landlords to return double the security deposit is dismissed with leave to reapply.

I dismiss the tenant's application for an authorization to recover the filing fee without leave to reapply.

I order that on June 24, 2020 (the date of this decision) the landlords are sufficiently served the tenant's forwarding address. The landlords are cautioned to comply with section 38 of the Act.

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 24, 2020