Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 5819 Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSD, FFT

Introduction

This participatory hearing was scheduled for 1:30 p.m. on November 10, 2020 pursuant to an Interim Order issued by an Adjudicator on July 22, 2020 in response to a tenant's Application for Dispute Resolution for return of double the security deposit under the Direct Request procedure.

At the participatory hearing, only the tenant appeared. Since there was no appearance on part of the landlord, I explored service of the hearing documents upon the landlord.

As seen in the Interim Decision, the tenant was required to serve the landlord with notification of the participatory hearing by serving the landlord with the Notice of Dispute Resolution Proceeding and the Interim Decision in a manner that complies with section 89 of the Act.

The tenant submitted that the Interim Decision and Notice of Dispute Resolution Proceeding was sent to the landlord via registered mail on July 23, 2020. The tenant testified that she sent the registered mail to the landlord's service address, as it appears on the tenancy agreement and the partial refund cheque the landlord sent to her. The tenant provided a copy of the registered mail receipt, including tracking number, as proof of service and a search of the tracking number showed that the registered mail was successfully delivered on July 27, 2020.

I was satisfied the landlord was duly served with notification of this proceeding in a manner that complies with section 89 of the Act and I continued to hear from the tenant without the landlord present.

On a procedural note, the style of cause was amended to identify the landlord as reflected on the partial refund cheque the landlord sent to the tenant.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Award of the filing fee.

Background and Evidence

The tenancy started on April 1, 2017 and the tenant paid a security deposit of $750.00. The tenancy was set to end on June 30, 2020; however, the tenant returned possession of the rental unit to the landlord on June 28, 2020 when the tenant met with the landlord's agent on June 28, 2020 to perform the move-out inspection and return the keys to the landlord.

The tenant testified that the landlord's agent instructed the tenant to provide her forwarding address on the move-out inspection report and sign it, which she did. After signing the move-out inspection report, the landlord's agent performed the inspection and noted a cracked mirror door. According to the tenant the landlord's agent stated that would have to come off the security deposit but no amount was suggested or agreed upon or entered on the move-out inspection report. In ending the inspection, the tenant was not given a copy of the move-out inspection report that she had signed.

The tenant called and texted the landlord a couple of weeks later to enquire about the security deposit and the landlord indicated that it was waiting for an invoice for the mirror replacement. Shortly afterwards, the tenant received an email from the landlord that included an invoice for replacement of the mirrored door in the amount of $501.54. The tenant responded, via email, indicating she did not agree to compensate the landlord such a high amount and suggested a replacement could be obtained for a much lesser amount.

In the few days that followed the tenant received a cheque dated July 14, 2020 in the amount of $248.46 in the mail plus the signature page of the move-out inspection report; but the full report was not provided to her. The tenant submitted that the landlord inserted a deduction of $501.54 in sending the signature page of the condition inspection report and that the amount was not there when the tenant signed the report on June 28, 2020. Rather, the tenant is of the position the landlord did not have the amount until much later since the invoice the landlord provided to her is dated July 14, 2020.

The tenant testified that she did not cash the partial refund cheque.

The landlord did not file an Application for Dispute Resolution to make a claim against the tenant's security deposit.

The tenant seeks return of double the security deposit, plus recovery of the filing fee.

Documentary evidence provided by the tenant included a copy of the tenancy agreement; an email showing the landlord collected the $750.00 security deposit; the signature page of the move-out inspection report; a copy of the partial refund cheque mailed to the tenant; and, text messages and emails exchanged between the tenant and the landlord after the tenancy ended.

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.

In this case, I accept the unopposed evidence that the tenant paid a security deposit of $750.00 to the landlord. I also accept the unopposed evidence that the tenant provided a forwarding address to the landlord and returned possession of the rental unit to the landlord, bringing the tenancy to an end, on June 28, 2020. Accordingly, I find the landlord had until July 13, 2020 to either: refund the security deposit to the tenant in the full amount; get the tenant's consent to make a deduction or deductions from the security deposit; or file an Application for Dispute Resolution to make a claim against the tenant's security deposit.

The tenant submitted that the move-out inspection report did not indicate a deduction of $501.54 was to be made from the security deposit when she signed it and the tenant did not consent to that deduction. I find the documentary evidence, namely: the text message from the landlord of July 14, 2020 and the landlord's email of July 14, 2020; and, the invoice dated July 14, 2020 supports the tenant's position that the amount of $501.54 was not on the move-out inspection report when she signed it on June 28, 2020 and that it was added to the document by the landlord after the tenant signed the report. As such, I find the landlord altered the move-out inspection report after it was

signed on June 28, 2020 and the altered document that includes a deduction of $501.54 is not binding or enforceable against the tenant. Therefore, I conclude the tenant did not provide the landlord with written consent for a deduction of $501.48 from the security deposit as would be required in order for the landlord to make such a deduction.

In sending the tenant a partial refund of the security deposit by way of a cheque dated July 14, 2020 without the tenant's consent for a deduction from the security deposit; and, in the absence of the landlord filing an Application for Dispute Resolution to make a claim against the security deposit, I find the landlord violated section 38(1) of the Act and the landlord must now pay the tenant double the security deposit, or $1500.00.

Given the tenant's success in this Application for Dispute Resolution, I further award the tenant recovery of the $100.00 filing fee she paid for this Application.

In keeping with the above, and considering the tenant has not cashed the partial refund cheque she received from the landlord, I provide the tenant with a Monetary Order in the sum of $1600.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of $1600.00 to serve and enforce upon the landlord.

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: November 12, 2020

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Residential Tenancy Branch