



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 30, 2021. The Tenant applied for the return of her security deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution and evidence package. No issue was raised with the service of that package. I find the Tenant sufficiently served this package to the Landlord for the purposes of this hearing. The Landlord stated she did not provide the Tenant with any documentary evidence. As such, the Landlord relied on oral testimony only in this hearing.

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. Not all evidence that was submitted will be summarized. Only evidence which underpins my decision will be referenced.

Preliminary and Procedural Matters

During the hearing, the Landlord argued that I do not have jurisdiction to hear this dispute because she shares a kitchen and a bathroom with the Tenant. As such, I must determine whether or not I have jurisdiction to hear this application. Below is my analysis on the matter.

I turn to the following portion of the Act:

What this Act does not apply to

4 This Act does not apply to

- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

During the hearing, the Landlord explained that she owns a large house, and she rents out bedrooms to separate people, under different tenancy agreements. The Landlord stated that the Tenant on this application rented a room in the basement of the house, and she shares a bathroom with another tenant in the basement, and shares a kitchen with all other Tenants in the house, upper and lower. The Landlord initially stated that there was a kitchen on the upper floor, as well as a kitchen on the lower floor, but later changed her story to say that there was only a kitchen on the upper floor, which she shared with the Tenant. The Landlord, and her friend, who was also present at the hearing, were repeatedly heard whispering in and saying contradictory things regarding the number and locations of kitchens. Initially, the Landlord indicated there were two kitchens in the house, then changed that to the only one. The Landlord also initially indicated she sleeps upstairs in the house, and later stated she sometimes sleeps in a detached “workshop” in the back of the house. The Landlord later backtracked to say that she doesn’t actually sleep out back, only uses it as an office/workshop.

I asked the Landlord if there were beds, washrooms or kitchens in the rear “workshop”, and she stated there were not, and it was only an office. However, the Landlord provided an unclear and hard to follow explanation of what she uses the space for, and whether or not she sleeps in the space. The Landlord later stated that she mostly resides in the upstairs of the house, and that there are no interior locks in the house. The Landlord stated that as a result of this setup, everyone in the house has access to use the kitchens, and common living areas, and there are no detached, lockable parts of the house, other than Tenants being able to lock their individual rooms.

The Tenant provided clear testimony regarding the fact that the Landlord has never slept in the house. The Tenant stated that the Landlord always lives in the rear of the house, in a detached garage style building, which has a bachelor style bedroom living room areas (with 2 beds), as well as a kitchen, and a bathroom. The Tenant stated that the Landlord has had issues with the city about unpermitted space, which resulted in

two bedrooms being decommissioned. The Tenant stated that the Landlord is avoiding admitting the rear outbuilding is habitable because she is trying to evade the law.

I note the two parties have a drastically different version of events. Having reviewed the testimony and evidence on this matter, I find the Tenant has provided a more detailed and compelling explanation as to where the Landlord has been living, and why she appeared evasive in the hearing. The Landlord was scattered, unclear and changed her story with respect to the number and location of the kitchens, and her testimony was disorganized and lacked veracity. I have afforded the Tenant's version of events more weight. I find it more likely than not, based on the testimony presented, that the Landlord does not share a kitchen or a washroom with the Tenant, as she appears to be staying in a separate building, out back.

I note the Landlord was the party who raised the issue of jurisdiction, and yet she provided no documentary evidence to support that she shares a space with the Tenant or where she actually resides. The onus is on the party presenting such an argument to prove their position, and I find the Landlord has failed to demonstrate this living arrangement does not fall under the Act. I accept jurisdiction on this matter.

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 \$260.00 and that the Landlord still holds this amount. The parties also confirmed that the Tenant left the rental unit on September 9, 2020.

The Tenant stated that she gave the Landlord her forwarding address in writing, the day she moved out. The Tenant stated that she abandoned her rental unit the day after she got into an argument with the Landlord. The Tenant stated that she left her notice (that she was moving out) and her forwarding address on a table within her rental unit on September 9. The Tenant provided a copy of this letter as well as a photo of the letter on a table in the rental unit. The Tenant stated she sent this photo of the letter by text message to the Landlord. The Tenant provided a copy of the text message and photo,

sent on September 10, 2020. However, no response from the Landlord was indicated via text after this photo of the letter was sent.

The Landlord denies getting this text message, and stated she never received this letter from the Tenant, although she acknowledged eventually getting the keys back. The Landlord acknowledged getting the Tenant's address for service when she received the Notice of Dispute Resolution proceeding for this hearing.

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, I find the Tenant did not properly provide her forwarding address to the Landlord, in accordance with the Act. I do not find there is sufficient evidence to support the Landlord received the forwarding address in writing via text message, or through physical copy by leaving it on the table in the rental unit. I note the Tenant has asserted the Landlord did not live in the rental unit, and lived out in the garage. It is unclear why the Tenant would attempt to deliver her forwarding address in this manner, if the Landlord did not reside in the house with her. In any event, the Landlord stated she didn't get the Tenant's forwarding address in writing, and the Tenant did not have further proof to corroborate she served it in accordance with the Act. I find the Tenant's application is premature, since she has not sufficiently served her address to the Landlord.

I find it important to note the following portion of the Act:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, 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

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant remains at liberty to provide her forwarding address in writing to the Landlord, should she wish to obtain her deposit back. I encourage the Tenant to use registered mail or some other verifiable tracking method to ensure she can sufficiently demonstrate she has given her forwarding address, in writing, at a future proceeding. Since the tenancy ended on September 9, 2020, the Tenant should keep in mind the time limits for providing the forwarding address, as specified above, and the Landlord should keep in mind the time limits prescribed under section 38(1) of the *Act*, should she be provided with the Tenant's forwarding address. After the Landlord receives the Tenant's forwarding address in writing, she has 15 days to either repay the deposit, or file an application against the deposit. These details are laid out under section 38 of the *Act*.

I dismiss the Tenant's application, in full, with leave to reapply.

Conclusion

I dismiss the Tenant's application, with 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: April 30, 2021

Residential Tenancy Branch