Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in December 2009 and ended on May 31, 2011. The parties further agreed that the tenant paid a $450.00 security deposit and a $450.00 pet deposit and that she left her forwarding address in the rental unit at the end of the tenancy.

The tenant acknowledged having received $457.56 of her security and pet deposits in the mail on June 29, 2011. She seeks an award of double the deposits as well as the amount withheld, which she asserted she did not give permission for.

The landlord testified that she mailed the cheque to the tenant on June 10 and that the tenant must not have received the cheque until June 29 because of the postal strike. The parties agreed that rotating strikes began on June 2 and that postal workers were locked out and mail deliver suspended on June 14. The landlord testified that she did not return the full amount of the deposits because in an email dated June 6, further to a discussion between the parties about damage to the rental unit, the tenant suggested that the landlord return $457.56 rather than the entire amount of the deposits as this would both compensate the landlord for the cost of repainting the unit and compensate the tenant for a delay in beginning the tenancy.

The tenant argued that the landlord should have known there was a postal strike and arranged to return the deposit to her personally or via courier. The tenant denied that her suggestion that the landlord return $457.76 was the equivalent of giving the landlord written permission to retain any part of the deposits and argued that the landlord should have responded to the email rather than simply issuing a cheque. The tenant further argued that

the landlord should not be permitted to retain any part of the deposits because the landlord failed to conduct a inspection of the unit when the tenancy began and ended.

The tenant seeks an award for times when the landlord entered the rental unit without having provided 24 hours advance written notice and without having obtained the tenant's consent. The tenant recalled one occasion on which the landlord came to the door of the unit asking to show the unit to prospective tenants. The tenant was sleeping at the time, but her boyfriend was at the unit and admitted the landlord. The landlord argued that she had enjoyed a positive relationship with the tenant and that notice given by way of telephone calls had always sufficed in the past. The landlord believed there may have been two occasions in which she did not receive a return call from the tenant confirming that she could access the unit.

The tenant seeks to recover rent for 4 days at a rate of $30.00 per day in which she was unable to access the unit at the beginning of December 2009 when the tenancy began. She claimed that the landlord's renovations were not completed on December 1 when the tenancy began and she was deprived of at least 4 days of quiet enjoyment. The landlord testified that she couldn't recall the situation but that her notes reflected that the tenant had been given keys on December 1.

Analysis

Although the tenant did not characterize her June 6 email as an offer of settlement, I find that it was indeed an offer. Until the offer was retracted, it was open to the landlord to accept the offer. I find that the offer was not retracted and therefore the landlord's issuance of the cheque for the exact amount proposed by the tenant represented an acceptance of the tenant's offer of a full and final settlement of the landlord's claim for the cost of repainting and the tenant's claim for recovery of rent for the first part of December.

I find that the tenant gave the landlord written permission to keep $442.24 from her deposits. Although the tenant has argued that the landlord's right to retain any portion of the deposits was extinguished by her failure to conduct inspections of the unit, the tenant has misapprehended the meaning of sections 24 and 36 of the Act which extinguishes the right of the landlord to *make a claim against* the deposits. The tenant voluntarily agreed in writing to permit the landlord to retain a part of the deposits, which is permitted by the Act even when the landlord's right to make a claim has been extinguished.

In the absence of evidence from the tenant proving that the refund cheque was mailed after June 10, I accept that the cheque was mailed by the landlord on June 10. Section 38(1)(c) of the Act requires the landlord to repay the security and pet deposit within 15 days of the date the tenancy ends. I find that the landlord met this obligation when she wrote a cheque and

placed it in the mail. There is nothing in the Act that obligates the landlord to use a different means of service when there is a mail strike and as up to June 10 there had only been rotating postal strikes, I find that it was reasonable for the landlord to assume that the letter might be somewhat delayed but would eventually find its way to the tenant, which it did. The Act does not require that the tenant receive the refund within 15 days; it only requires that the landlord repay it within 15 days.

For these reasons I dismiss the claim for the remainder of the deposits and the claim for double the deposits. I also dismiss the claim for loss of quiet enjoyment for December 2009 as this issue was clearly part of the tenant's June 6 settlement offer.

I also dismiss the tenant's claim for compensation for the occasions on which the landlord entered the rental unit without her consent. There is nothing in the Act which prevents a landlord from arriving at the door of the rental unit and requesting consent. In the absence of 24 hours written notice the tenant or her boyfriend would have been within their rights to refuse access, but they chose to grant access, the landlord's entry was not illegal.

There is insufficient evidence to prove that the landlord ever entered the rental unit without the tenant's consent when the tenant was not at the unit. However, as the parties seemed to agree that there were just 2 occasions on which the landlord entered without having first obtained the tenant's verbal consent on the phone and that one of those occasions was the instance in which the tenant's boyfriend granted access, I find that even if there were one occasion in which the landlord illegally entered the unit, it is so insignificant that it does not attract compensation. Accordingly I dismiss the claim.

Conclusion

The tenant's claim is dismissed in its entirety.

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: October 14, 2011

Residential Tenancy Branch