Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNSD, FF

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, for the return of a security deposit and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord, S.B., claimed that he had not been served with the Tenant's Application and Notice of Hearing. The Tenant claimed that this Landlord would not provide her with an address for service so she advised him by e-mail that she would be sending it to the rental unit address via registered mail. S.B. claimed that as he was working out of province, he would not have been able to collect that mail and advised the Tenant a few days later to send it to another address however she had already mailed the hearing package. S.B. admitted that he was able to review a copy of the hearing package on January 30, 2012, the same day it was received by the other Landlord, J.M. As S.B. has had the ability to review the Tenant's hearing package, I find pursuant to s. 71 of the Act that he has been sufficiently served with it for the purposes of the Act.

At the beginning of the hearing, both Landlords sought an adjournment of the hearing so that she could provide responding evidence. The Landlords confirmed that the evidence they sought to provide was quotes or receipts for repairs that they believed the Tenant should compensate them for. However, the Landlords did not file an application for dispute resolution to make a claim against the security deposit for damages to the rental unit or any other form of compensation. As this evidence is irrelevant to the Tenant's application, I find that an adjournment is unnecessary and the Landlords' application is accordingly dismissed.

Issue(s) to be Decided

1. Is the Tenant entitled to recover an overpayment of rent due to an illegal rent increase?
2. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on September 1, 2010 and ended on January 15, 2012 when the Tenant moved out. Rent was $1,000.00 per month until December 1, 2011 when it increased to $1,200.00 per month. The Tenant paid a security deposit of $500.00 at the beginning of the tenancy.

On or about August 15, 2011, the Landlords gave the Tenant a Notice of Rent Increase which stated that effective December 1, 2011 her rent would be $1,200.00. The Tenant said she advised the Landlords that this increase was more than allowed under the Regulations to the Act however the Landlords advised her that they needed to cover their expenses by increasing the rent or else sell the property. The Tenant said she paid the rent increase for December 2012.

The Tenant said she gave her forwarding address in writing to the Landlords by e-mail on or about December 5, 2011. In particular, the Tenant said she sent out a general mailing to all of her e-mail contacts advising them of her new mailing address as of January 15, 2012. The Tenant also claimed that all of her e-mail correspondence thereafter also had this address below her signature. The Tenant further claimed that when she dropped off the rental unit keys to the Landlords' realtor, she included an address that also contained her mailing address. The Tenant admitted that none of her correspondence specifically stated that her security deposit should be sent to this address. The Landlords denied receiving the Tenant's forwarding address in writing.

The Parties agree that the Landlords did not have the Tenant's written authorization to keep the security deposit and they have not returned any of the Tenant's security deposit.

Analysis

Section 43 of the Act says that a Landlord may only impose a rent increase up to the amount permitted under the Regulations to the Act unless the Landlord has the written agreement of the Tenant to the increase or has been granted prior approval by the Residential Tenancy Branch to impose an additional rent increase. Although the Landlords gave the Tenant the proper form for a Rent Increase, I find that the amount of the rent increase exceeded the allowable amount under the Regulations to the Act for 2011 which was 2.3% or $23.00. Consequently, I find that the Tenant is entitled pursuant to s. 43(5) of the Act to recover an overpayment of rent in the amount of $177.00.

Section 38(1) of the Act says that a Landlord has 15 days from the day the tenancy ends or the day he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to filed an application for dispute

resolution to make a claim against the security deposit. If a landlord does not do either one of these things and does not have the Tenant's written consent to keep the security deposit then pursuant to s. 38(6) of the Act, the landlord must return double the amount of the security deposit to the Tenant.

Based on the e-mail correspondence between the Tenant and one of the Landlords, J.M., at the end of the tenancy, I find that the Landlords did have the Tenant's mailing address however I find that this is not the same thing as a forwarding address in writing for the purposes of returning a security deposit. The Tenant claimed that she also provided this address to the Landlords' real estate agent when she returned the keys at the end of the tenancy. However, the Landlords denied that they received this and the Tenant did not provide a copy of it as evidence at the hearing. Consequently, I find that the Tenant has not provided the Landlords with her forwarding address in writing for the purposes of s. 38(1) of the Act.

The Tenant confirmed during the hearing that the address for service set out on her application for dispute resolution is her forwarding address for the purposes of s. 38(1) of the Act. Consequently, I find that the Landlords now have the Tenant's forwarding address in writing and therefore they have 15 days from the date of this decision to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against it. If the Landlords do not take one of these steps and do not have the Tenant's written consent to keep the security deposit, then the Tenant may re-apply for the return of double the security deposit.

As the Tenant has had some success on her application, I find that she is entitled pursuant to s. 72 of the Act to recover from the Landlords the $50.00 filing fee she paid for this proceeding.

Conclusion

The Tenant's application for the return of a security deposit is dismissed with leave to reapply. A Monetary Order in the amount of **$227.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: February 13, 2012.

Residential Tenancy Branch