Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD

Introduction

This hearing dealt with (a) an application by the tenant for a monetary order for double the security deposit; and (b) an application by the landlord for a monetary order for half a month's rent. Both parties have requested recovery of the filing fee from each other. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on January 1, 2011 and ended on January 31, 2012. The rent was $995.00 per month. The tenant paid a security deposit of $497.50 at the start of the tenancy. One of the stipulations in the written tenancy agreement was that 2 months notice was required for "either party to end the tenancy for any reason."

By way of an e-mail dated December 8, 2011, the tenant gave the landlord notice that he would be ending the tenancy and vacating the rental unit on January 31, 2012. On the same day the e-mail was sent, the landlord left town and did not return until January 5, 2012. Upon return, the landlord checked his e-mails and saw the December 8 note from his tenant. The landlord phoned the tenant right away and reminded him that the tenancy agreement stipulated 2 months notice. That being said, the landlord told the tenant that he would try to re-rent the unit for February 1st but that if it did not rent, the tenant would still be responsible for paying the February rent. At the hearing the tenant acknowledged that he was aware that the landlord was going away for a month but believed that the landlord would be checking his e-mails while he was away. The tenant also testified that the parties had always communicated by e-mail during the course of the tenancy.

The tenant vacated the rental unit on January 31st. The tenant testified that he gave the landlord his forwarding address in writing on the day he moved out but was unable to

provide proof of this. The landlord denied receiving the forwarding address in writing on January 31st. The tenant testified that he then provided the landlord with his forwarding address by e-mail on February 6, 2012. A copy of this e-mail was submitted into evidence. The landlord has not returned any of the security deposit to the tenant.

The landlord was able to re-rent the unit for February 15, 2012.

On February 26, 2012 the tenant filed his application for dispute resolution. The landlord then filed his application for dispute resolution on February 28, 2012.

Analysis

I shall deal with each of the parties' claims in turn.

Tenant's claim

The tenant has made a monetary claim of $995.00 representing double the amount of the security deposit paid by the tenant. The tenant has made this claim on the basis of Section 38 of the Act.

Section 38(1) of the Act says that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) then says that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit

In the present case, the tenant sent the landlord his forwarding address by e-mail on February 6th. Although e-mail is not a method of delivery that is covered by the Act, I am satisfied based on the number of e-mails that were being exchanged between the parties in late January and throughout February that the landlord did receive this e-mail. The question as to how many days passed before the landlord actually received and read this e-mail can be dealt with fairly, I believe, by applying Section 90 of the Act which stipulates when documents are deemed to have been received. In my view, the time frame of 3 days that the Act stipulates for a fax is also appropriate for an e-mail.

For ease of reference, Section 90 is reproduced here:

> ***When documents are considered to have been received***
>
> ***90*** *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents] is deemed to be received as follows:*

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Thus, if the e-mail is deemed to be received on February 9th, the landlord had 15 days from that date to file an application for dispute resolution claiming against the security deposit. In other words, the landlord had to file by no later than February 24th. I note that even if the 5-day deemed receipt period were applied, the landlord would have to have filed by no later than February 27th (February 26th is a Sunday). In the present case, the landlord did not file until February 28th.

As a result, the landlord in this case is liable to pay to the tenant the sum of $995.00 representing double the security deposit.

Landlord's claim

The landlord has made a monetary claim against the tenant comprised of the following:

Unpaid rent (first half of February)	$497.50
Unpaid utilities (up to Feb 15)	$173.17
TOTAL	**$670.67**

I shall deal with each of these claims in turn.

Unpaid rent ($497.50) – The landlord makes this claim on the basis that the tenant did not give two full months' notice of his decision to end the tenancy as required by the tenancy agreement. The landlord testified that in fact he really only got the tenant's notice when he returned from vacation on January 5, 2012 because he had not been checking his e-mails while away.

The question arose at the hearing as to whether e-mail is even a valid form of written notice. The tenant argued that it was a valid form of notice because the parties had regularly communicated by e-mail but the landlord disputed this saying that e-mails are not referred to in the notice provisions of the Residential Tenancy Act. I realize that in my analysis above relating to the tenant's claim, I found e-mail to be a sufficient form of

notice but I point out that it was clear based on the number of e-mails going back and forth between the parties that they were indeed communicating via e-mail. I do not have the same opinion of the e-mail that was sent by the tenant on December 8th because the tenant has admitted that he knew the landlord was away when he sent it. However, all that being said, the issue is moot in this case because even if I were to find that the tenant's notice was validly given by e-mail, it was nonetheless sent with less than two months notice – the time period both parties had agreed to for terminating the tenancy. As a result, I find that the tenant remained liable for the rent for February. Luckily for the tenant, the landlord was able to find tenants for February 15th, thus reducing the tenant's liability by half.

In the result, I find that the landlord has established his monetary claim against the tenant in the amount of $497.50 representing unpaid rent for the first half of February.

Unpaid utilities ($173.17) – The landlord has provided utilities bills for both gas and hydro and has made a genuine pre-estimate as to daily charges up to February 15th. On the strength of these utilities bills I am satisfied that the landlord has established this portion of the claim.

Conclusion

I order that the landlord pay to the tenant the sum of $995.00.

I order the tenant to pay to the landlord the sum of $670.67.

When the above monetary orders are set off against each other, there is a resulting balance of $324.33 due to the tenant. Accordingly, the enclosed order reflects this set-off amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I dismiss both parties' requests for recovery of the filing fee because both parties have been successful in their claims.

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*.