Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Preliminary Matter

Landlord's Evidence

The landlord had submitted an evidence package which was received to file on January 18, 2013. The tenant denied ever receiving the evidence at all.

Residential Tenancy Proceedings Rules of Procedure, Rule 3.5 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Rule 4.1 of the Residential Tenancy Proceedings Rules of Procedure states that if the Respondent intends to dispute an application, the evidence upon which the Respondent intends to rely must be received to the file and by the Applicant, as soon as possible and at least 5 days before the dispute resolution hearing or if that is not possible, the

evidence must be filed with the Residential Tenancy Branch and received by the Respondent at least 2 days prior to the hearing.

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

Section 90 of the Act states that 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.

Rules 3.5(c) and 4.1(c) of the Residential Tenancy Rules of Procedure provide that if copies of the evidence are not received by the Residential Tenancy Branch or the other party as required, the dispute resolution officer must apply Rule 11.6 to the evidence.[*Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the hearing*]

In this instance I found that the landlord's evidence would not be considered because the tenant did not receive the evidence package. However verbal testimony given by the landlord was accepted and considered.

Background and Evidence

The tenancy began in August 2012 at which time a security deposit of $375.00 was paid. Current rent was $730.00 per month. The tenancy ended at the end of September 2012 and the landlord testified that he had received a written forwarding address for the tenant on October 1, 2012.

The tenant testified that the landlord kept the security deposit without permission and without obtaining an order under the Act to do so. The tenant is requesting the return of double the security deposit.

The landlord acknowledged that the deposit was paid but not returned to the tenant after the end of the tenancy.

The landlord stated that there was a term in the tenancy agreement that required the tenant to repair any damage to the rental unit. The landlord testified that the toilet was in working condition when the tenant moved in and was damaged when she moved out. The landlord testified that because this tenant must pay for the repairs under her tenancy agreement, the deposit was not refunded.

Analysis :

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy. A landlord may also retain the security deposit if the landlord has successfully obtained a monetary order through dispute resolution permitting the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

The Act states that, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give written permission to the landlord allowing the landlord to keep the deposit. I also find that the landlord did not make an application to obtain an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for damages and loss caused by the tenant, I find that I am unable to hear nor consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me.

The landlord is at liberty to make his own application if the landlord intends to pursue a claim against the tenant. Information is available at Residential Tenancy Branch for both landlords and tenants.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of $800.00 comprised of $750.00, which is double the security deposit of $375.00 now being held, plus the $50.00 cost of the application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for $800.00. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and was granted a monetary order for a refund equivalent to double the security deposit.

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: January 22, 2013

Residential Tenancy Branch