Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit. The tenant and one of the named landlords appeared at the hearing. Based upon the registered mail evidence provided to me, including tracking numbers, I was satisfied the tenant served each of the named landlords with the hearing documents via registered mail sent on November 26, 2012. Section 90 of the Act deems a party to be served five days after mailing even if the party refuses to accept or does not pick up the registered mail. As I was satisfied that each of the named landlords was sufficiently served with notice of this proceeding, this decision, and the Order that accompanies it, names both landlords. Both parties that appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet deposit?

Background and Evidence

The tenancy commenced August 2011 and the tenant paid a security deposit of $600.00 and a pet damage deposit of $600.00. The tenant and the landlord's son participated in a move-out inspection together at the end of July 2012 but a condition inspection report was not prepared.

The tenant did not authorize the landlords to retain any portion of the security deposit or pet deposit. The tenant wrote a letter to the landlords on August 22, 2012 seeking return of the security deposit and pet deposit and the tenant a forwarding address in that letter which was that of her parent's home. The letter was sent via registered mail on August 23, 2012 and was successfully delivered on August 24, 2012.

The landlord acknowledged receiving the registered letter from the tenant and read it into evidence during the hearing. The landlord acknowledged that she did not have the tenant's consent to retain any portion of the deposits, did not return any portion of the deposits to the tenant, and did not file an Application for Dispute Resolution claiming against the deposits.

The landlord submitted the tenant is not entitled to return of her deposits because:

1. The tenant provided a forwarding address that was not the address at which she resided.
2. The tenant did not give sufficient notice to end the tenancy and left the unit damaged.

Analysis

As the parties were informed during the hearing, the landlord's submissions regarding damage and insufficient notice to end the tenancy were not issues for me to decide as the landlords had not filed an Application for Dispute Resolution. Rather, the issues for me to determine are whether either party extinguished their right to the deposits; and, whether the landlords complied with the requirements of the Act with respect to handling of the deposits. The landlords remain at liberty to make a separate application for damages within two years of the tenancy ending.

Based upon the undisputed evidence and the requirements of sections 24 and 36 of the Act, I find the landlords extinguished their right to make deductions from the deposits for damage by failing to complete condition inspection reports that comply with the requirements of the Residential Tenancy Regulations.

Deductions for unpaid rent or other amounts unrelated to damage may be made from a deposit where the landlord has the written consent of the tenant or the authorization of an Arbitrator. In this case, the landlords did not have the written consent of the tenant or an Arbitrator to make any deductions from the deposits.

Section 38(1) of the Act requires the landlord to either return the security deposit and pet damage deposit to the tenant or make an Application for Dispute Resolution claiming against the deposits within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

There is no requirement in the Act that a tenant's forwarding address be the same as the tenant's address of residence. In fact, section 89(1) of the Act recognizes that a tenant's forwarding address and address of residence may be different.

Upon hearing the landlord acknowledge receipt and read the tenant's letter of August 22, 2012 into evidence, I am satisfied the tenant provided the landlords with a forwarding address at which she could receive a refund cheque or documents, such as a Landlord's Application for Dispute Resolution, had the landlords pursued such a remedy.

Since the landlords did not obtain the tenant's written consent to make any deductions from the deposits, did not file an Application for Dispute Resolution, and did not refund the deposits to the tenant within 15 days of receiving the forwarding address I find the landlords violated section 38(1) of the Act and the tenant is entitled to return of double the deposits.

In light of the above, the tenant's request for $2,400.00 is granted plus recovery of the $50.00 filing fee paid for this application. The tenant is provided a Monetary Order in the total amount of $2,450.00 to serve upon the landlords. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order in the amount of $2,450.00 to serve upon the landlords and enforce as necessary.

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 27, 2013

Corrected: March 19, 2013

Residential Tenancy Branch