Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNKELD PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes: MNSD

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

It was clear from the written correspondence between the parties which was submitted in evidence, that there was significant animosity between the Tenant and the Agent for the Landlord toward the end of the tenancy.

Furthermore, during the hearing the participants had to be reminded to address the facts in issue, rather than become entrenched in personal animosity.

Issue(s) to be Decided

Has there been a breach of the Act by the Landlord entitling the Tenants to return of double the security deposit?

Background and Evidence

This tenancy began on October 1, 2012, with the parties entering into a written, fixed term tenancy agreement, for a period of four months. The rent was $950.00 per month, payable on the first day of the month and the Tenants paid the Landlord a security deposit of $475.00 and a pet damage deposit of $475.00, in October of 2012. In January of 2013, the parties entered into a second fixed term tenancy agreement, which was to expire on June 30, 2013, at 1:00 p.m. Both parties agreed in writing that the tenancy would end at this time and date. Otherwise the terms of the second agreement were largely similar to the first agreement and the deposits carried forward.

The parties agreed that an incoming condition inspection report had been completed. The parties disagreed about the circumstances surrounding the move out condition inspection report. This issue is addressed below.

I find the parties established a pattern of communicating through email. In an email dated June 27, 2013, the Tenants provided the Landlord with a written notice of the forwarding address to return the deposits to. A copy of the email was supplied in evidence. The Tenant also testified she sent the Landlord a copy of the forwarding address via regular mail, sometime in July of 2013. The Agent for the Landlord acknowledged receipt of the forwarding address of the Tenants.

The Tenants did not agree to sign over a portion of the security deposit to the Landlord.

As to the move out condition inspection report, the parties exchanged several emails trying to agree on time and date for the meeting. In the first email dated June 19, 2013, the Agent for the Landlord suggests the inspection take place on Saturday June 29, at 3 p.m.

The Tenant replies that date is fine but the time is wrong for her. After exchanging a more emails over the next few days, on June 27th the Tenant agreed to 10:00 a.m.

The Agent then replied she cannot make it at 10:00 a.m. on June 29th. It is unclear if the parties agreed to any other time for June 29, although the Tenant appears to have asserted noon would be acceptable.

On June 28, the Tenant advised the Agent for the Landlord in an email that all of her possessions will not be out until Sunday afternoon. The Tenant suggests the Agent for the Landlord do an inspection on Saturday and another on Sunday when the rental unit is vacant of personal property.

The Agent for the Landlord replied in an email that it will have to be done on Saturday the 29th, as the Agent cannot do it on Sunday the 30th. The Agent informs the Tenant that all of her property must be out of the rental unit as the Agent will not conduct the inspection with the Tenants' property in the rental unit.

The Agent for the Landlord then went to the rental unit on June 28, 2013, and posted a Notice of Final Opportunity to schedule an inspection (the "Notice"). The Agent proposes June 29, at 12:00 noon in this Notice.

Early on June 29th, the Tenants wrote the Agent for the Landlord another email explaining they have the rental unit until midnight on June 30, and suggested they agree to do the inspection with the Tenants' property still in the rental unit. (I note the Tenant was in error suggesting they had the rental unit until midnight on June 30, as section 14(6) of the tenancy agreement and the Act required vacancy by 1:00 p.m. on June 30, 2013, as the parties could not agree on another time.)

The Agent for the Landlord testified she attended the rental unit on June 29, 2013, although she did not stay at the rental unit for more than two or three minutes, as the Tenant phoned the police. The Agent for the Landlord testified she told the Tenant she would return Sunday between noon and 1:00 p.m. to conduct the inspection. The Agent alleges the Tenant agreed to this.

The Agent for the Landlord testified she attended the rental unit on June 30, but the Tenants had vacated and were not there. The Agent for the Landlord testified she did not complete the move out condition inspection report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the deposits.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the deposits, as required under section 38 of the Act.

I find the Landlord did not provide the Tenant a bona fide second opportunity to conduct the inspection. The Agent was aware that the Tenants would not have their property

out on the 29th. The Agent herself stated that the condition inspection report could not be conducted when the Tenants still had their possessions in the rental unit. This is actually required under section 4 of the regulation of the Act, unless the parties agree to a different time.

Under section 17 of the regulation the Landlord was required to propose a second opportunity, different from the first opportunity, to conduct the inspection. However, the Agent dated the Notice for the second opportunity to do the inspection for June 29, at 12:00 p.m., which was the same as the first opportunity which had been rejected by the Tenants.

Had the Agent for the Landlord dated the Notice of second opportunity for June 30, 2013 at 1:00 p.m., I would have found it to be a valid Notice under the Act and regulation, as it provided a second opportunity, different than the first.

Furthermore, by failing to complete the outgoing condition inspection report at all, the Landlord extinguished the right to claim against the deposits for damages, pursuant to section 36(2) of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Deposits are held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep a deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenants. Here the Landlord did not have any authority under the Act or from the Tenants to keep any portion of the deposits.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **$1,900.00**, comprised of double the security deposit and the pet damage deposit (2 x $950.00). No interest is payable on deposits received in 2012 or 2013.

Conclusion

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 06, 2013

Residential Tenancy Branch