Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on October 1, 2009 at which time the tenant paid a $750.00 security deposit. The parties signed a tenancy agreement which named the tenant, E.H. and M.H. as co-tenants. E.H. vacated the rental unit in 2010 and the landlord was aware that E.H. was no longer living in the unit. M.H. vacated the rental unit in July 2012 and the landlord was aware that M.H. had vacated. The tenant and M.H. gave notice that they were ending the tenancy on August 31, 2012 and on that date, the tenant and the landlord's sister conducted an inspection of the unit. A written report (the "First Report") was prepared which did not indicate any damage except for a notation reading, "confirmation on lawn up to $.) The First Report indicated that $750.00 was due to the tenant. Both the tenant and the landlord's sister signed the report and the tenant provided her forwarding address in writing.

On September 14, 2012, the landlord emailed the tenant advising that there were problems with the condition of the rental unit. The tenant to that email the same day and testified that she did not hear from the landlord after that date. On September 15, the landlord arranged to meet with E.H. at the rental unit. The landlord and E.H. inspected the unit together and E.H. signed a condition inspection report (the "Second Report") which listed a number of deficiencies. E.H. agreed in writing that the landlord could retain the security deposit and that a further $574.30 was owed to the landlord.

On October 3, 2012, the landlord met with M.H. and M.H. signed both the First Report and the Second Report. The landlord and M.H. did not inspect the unit together.

The tenant took the position that the landlord failed to return the security deposit or file a claim against the deposit within 15 days of the end of the tenancy and the date the landlord received the forwarding address in writing and that she is therefore entitled to double the security deposit pursuant to section 38(6) of the Act.

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord took the position that because she obtained in writing the consent of E.H. and M.H. to retain the security deposit, she has complied with section 38(4) of the Act.

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

38(4)(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

38(4)(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Analysis

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

It is clear that because the tenancy ended on August 31 and the forwarding address was provided the same day, the landlord had to deal with the deposit no later than September 15, 2012. This was the date on which the landlord re-inspected the unit with E.H. and obtained her signature on the Second Report permitting the landlord to retain the security deposit. The question before me is whether the signature of E.H. was sufficient to comply with section 38(4) as quoted above and relieved the landlord of her obligation to return the deposit or file a claim against it.

The Act contemplates that at the end of a tenancy, just one inspection will be undertaken. In this case, the landlord arranged with her agent to conduct an inspection with the tenant and the First Report was produced as a result of that inspection. The landlord communicated via email with the tenant advising that deficiencies had been discovered after the inspection was done, but the instead of pursuing that conversation with the tenant, chose to conduct a second inspection with a tenant whom she knew had not resided at the rental unit for the past 2 years.

Because E.H.'s name was on the tenancy agreement which was not changed after her 2010 departure, E.H. remained liable for the tenant's obligations and presumably had the authority to release the security deposit to the landlord. However, in the circumstances and because the landlord conducted the first inspection and created the First Report with the tenant, I find that she had an obligation to continue to communicate with the tenant as the landlord's sister had already indicated that the security deposit would be returned to the tenant. Although the tenant was living out of town on September 14 when the landlord first advised that there were problems with the unit, the landlord was able to communicate with her via email to which the tenant was in the habit of quickly responding. I find that by cutting off communication with the tenant and instead conducting a second inspection with a different tenant who had not lived at the unit for several years, the landlord attempted to circumvent her responsibility under the Act. I find that the second inspection and the signature and agreement of E.H. to retain the security deposit has no legal effect as the inspection had already been completed and the tenant told that she would receive the security deposit. When the landlord discovered damages to the rental unit for which she believed she should be compensated, the proper course of action would have been to either contact the tenant as she was the party with whom the move out inspection had been performed or file an application for dispute resolution.

I further find that the signature of M.H. on both the First Report and the Second Report has no legal effect as he did not attend and inspect the unit and therefore could not have known whether the landlord's claims that the unit was damaged and unclean were

founded on fact. Further, M.H. did not sign his agreement that the landlord could retain the deposit until October 3, which was well outside the 15 day time period in which the landlord was obligated to deal with the deposit.

I find that the landlord failed to file a claim against the deposit or return it in full within 15 days of the end of the tenancy and is therefore obligated to pay the tenant double the amount of the deposit. I award the tenant $1,500.00. I further find that the tenant is entitled to recover the $50.00 filing fee paid to bring her application for a total award of $1,550.00. I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is awarded $1,550.00 which represents double the security deposit and the filing fee.

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 23, 2014

Residential Tenancy Branch