Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF (Landlord's Application)
MNSD, MNDC, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlord and the Tenant.

The Landlord applied on January 14, 2016 for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee. The Landlord amended the Application on February 2, 2016 for a request to keep the Tenant's security deposit. The Tenant applied on January 26, 2016 for: money owed or compensation for damage or loss under Act, regulation or tenancy agreement; the return of the security deposit; recovery of the filing fee.

The Tenant appeared for the hearing with a legal advocate and a translator. The Landlord appeared for the hearing with her husband who acted as the Landlord's agent. However, only the Tenant, the Landlord, and the Landlord's agent provided affirmed testimony.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the relevant issues to be decided, make submissions to me, and cross examine the other party on the evidence provided.

The parties confirmed receipt of each other's Application and their documentary and photographic evidence served prior to the hearing. However, the Tenant denied receipt of the Landlord's amended Application dated February 2, 2016. The Landlord's agent insisted that the Amended Application was served to the Tenant on June 22, 2016 along with their additional evidence. As a result, I turned my mind to the Landlord's amended Application. The Landlord stated in her written submissions that when she made the initial Application on January 14, 2016, she assumed that by ticking off the box asking for monetary compensation was the actual request to keep part of the Tenant's security

deposit. The Landlord writes that they did not tick off what they learnt to be the correct box after they received the Tenant's Application at the start of February 2016, because they thought this related to a pet damage deposit which was not applicable in this case. The Tenant testified that because the Landlord had failed to make the Application to keep her security deposit, this was the reason why she filed her Application to claim double the amount back pursuant to Section 38(1) and 38(6) of the Act.

Based on the evidence before me, I accepted the Landlord's submission that when she made her Application on January 14, 2016, she made a clerical mistake in not selecting the box to request the Tenant's security deposit. This was further reinforced and consistent with the fact that the Landlord made the amendment shortly after receiving the Tenant's Application. Therefore, I informed the parties that I would amend the Landlord's original Application to include the request to deduct from the Tenant' security deposit pursuant to my authority under Section 64(3) (c) of the Act. However, I did express my concern about the fact that the Tenant had not been served with the amended Application and according to the Landlord it was served late. Therefore, I offered the Tenant an opportunity to adjourn the hearing to allow for her to see the amended Application but informed that this would still not change my decision to amend the Landlord's original Application. The Tenant and the Tenant's legal advocate did not oppose this decision and the hearing continued with their consent.

The parties confirmed that the tenancy had ended by mutual agreement on December 31, 2015 and that Tenant had provided the Landlord with a forwarding address in writing prior to this end date. Therefore, the Landlord would have had until January 15, 2016 to make the Application to keep the Tenant's security deposit. Based on my above findings, I informed the Tenant that the Landlord had filed the Application on February 14, 2016, being within the 15 day time limit provided by Section 38(1) of the Act.

In addition, the parties had both made submissions in relation to the condition inspection reporting requirements of the Act. In this respect, I informed the parties that as the Landlord had not made a claim for damages to the rental unit, the evidence around the condition inspection of the rental unit and the subsequent doubling penalty would not be relevant to the monetary claims before me as the Landlord had only applied to recover late rent and bank fee charges for September and December 2015. The parties were informed that I would deal with the Landlord's monetary claim and decide what is to happen in relation to the return of the Tenant's security deposit. The parties confirmed their understanding of this and proceeded to provide evidence on these matters.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The Tenant did not dispute the Landlord's monetary claim for $55.00 for late fees and bank charges claimed. The Tenant stated that she gave written permission to the Landlord to keep this amount from her security deposit. However, the Tenant was only able to provide written consent in the form of a letter to the Landlord for part of the amount claimed by the Landlord. Therefore, I find the Landlord would have had no option to the have made the Application to keep the Tenant's security deposit. Accordingly, I found that the Landlord would have been entitled to recover the filing fee. However, as the Landlord made a mistake on the original Application to elect to deduct from the Tenant's security deposit, I find this caused the Tenant to make her Application. Therefore, the Tenant would have been entitled to recover her filing fee. The parties were informed that as both parties would be eligible to recover their filing fee, they would both effectively be offset with each other and cancelled.

As a result, the parties agreed that the Landlord can deduct $55.00 from the Tenant's $400.00 security deposit and return the remaining amount of $345.00 back to the Tenant forthwith. This is in **full** satisfaction of both Applications. The Tenant is issued with a Monetary Order in the amount of $345.00 which is enforceable in the Small Claims Division of the Provincial court **if** the Landlord fails to make payment.

This agreement and order is fully binding on the parties and is in full satisfaction of the Applications. The parties confirmed their voluntary agreement to resolution in this manner both during and at the end of the hearing. Both files are now closed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 20, 2016

Residential Tenancy Branch