Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on August 10, 2016 lasted approximately 77 minutes and the "second hearing" on October 4, 2016 lasted approximately 58 minutes.

The tenant attended both hearings. "Landlord DM" attended the first hearing only. Landlord RM ("landlord") attended both hearings. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of landlord DM at the second hearing.

Pursuant to section 64(3)(c) of the *Act*, I amended the landlords' application to correct the spelling of the tenant's last name in my interim decision following the first hearing. The tenant agreed to this amendment request by the landlords. The correct spelling is reflected in the style of cause on the front page of both the interim and this decision.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on August 10, 2016 was adjourned because the tenant did not have sufficient time to respond to the landlords' application, as it was served late. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision adjourning the first hearing and outlining these specific instructions.

At the first hearing, the tenant confirmed receipt of the landlords' application for dispute resolution hearing package, with the exception of two pages. At the second hearing, the tenant confirmed receipt of the two pages from the landlords. The tenant said that she accepted service by mail instead of email, as previously agreed between the parties, because there was a problem with the landlords' email. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' entire application and written evidence package. The tenant said that she had reviewed the application and evidence, had a sufficient time to respond and was ready to proceed with the second hearing.

At the second hearing, the landlord confirmed receipt of the tenant's responsive evidence, including a USB drive with audio and video files. The landlord said that she accepted service by regular mail on September 8, 2016, instead of the deadline in my interim decision of August 31, 2016. I received the tenant's written evidence by August 31, 2016 at the Residential Tenancy Branch ("RTB"). In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenant's written evidence package. The landlord said that the landlords had reviewed the evidence, had a sufficient time to respond and were ready to proceed with the second hearing.

Accordingly, I proceeded with the second hearing and considered both parties' written and digital evidence at the second hearing and in my decision on the basis of both parties' consent.

Preliminary Issue – Dismissal of Landlords' Application

The first hearing only dealt with service issues with respect to both parties' written evidence, not the merits of the landlords' application. That hearing was then adjourned to the second hearing at 9:30 a.m. on October 4, 2016. Both parties agreed that they were available during the above date and time when it was discussed during the first hearing on August 10, 2016.

The second hearing began at 9:30 a.m. on October 4, 2016. The landlord exited the conference call at 10:03 a.m., without any notice to me. At the time that the landlord exited the conference, I was asking the landlord not to interrupt the tenant, while she was speaking and the landlord had done so a number of times prior to that. I had advised both parties at the outset of the hearing not to interrupt each other or myself and that both parties would be given a chance to speak.

The parties had not presented testimony regarding the merits of the landlords' application at the time that the landlord exited the second hearing. The parties had only

discussed service of documents and basic details about the tenancy, including start and end dates, whether a written tenancy agreement was signed and whether move-in and move-out condition inspection reports were completed for this tenancy.

The second hearing ended at 10:28 a.m. I waited for the landlord to reconnect to the second hearing and she did not do so. I asked the telephone operator to call the landlord at the telephone number provided in the landlords' application. At 10:22 a.m., the telephone operator informed me that he had tried to call the landlord three times and all calls went straight to voicemail. The telephone operator notified me that he had left a voicemail message at the landlord's number to advise her that she was required to attend the RTB hearing and that he had called to reconnect her. The landlord still did not call back after these attempts were made. Therefore, after hearing testimony from the tenant, I concluded the second hearing. I waited an extra 25 minutes from 10:03 a.m. to 10:28 a.m., in order to allow the landlord to call back into the hearing, before concluding the conference.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

> *7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any submissions by the landlords in support of their monetary claim, I order the landlords' entire application dismissed without leave to reapply.

Issue to be Decided

Is the tenant entitled to the return of her security deposit?

Background and Evidence

Both parties agreed that this tenancy began on June 1, 2013. The tenant said that this tenancy ended on February 2, 2016 but she provided the keys to the landlord on February 5, 2016. The landlord said that the tenancy ended on February 5, 2016, when the keys were returned by the tenant. Both parties agreed that a written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant confirmed that monthly rent of $1,200.00 was payable on the first day of each month and that she paid a security deposit of $600.00 to the landlords, which the landlords continue to retain. The tenant confirmed that the landlords did not have

written permission to keep any amount from her security deposit. Both parties agreed that no move-in condition inspection report was completed for this tenancy. The tenant said that no move-out condition inspection report was completed for this tenancy, only a visual inspection was done. The tenant provided a coloured photograph of a letter, dated February 16, 2016, containing her written forwarding address, which she said she sent by way of registered mail to the landlords on February 18, 2016. The Canada Post receipt and tracking number are also visible in this photograph.

Analysis

Residential Tenancy Policy Guideline 17 states the following with respect to security deposits (emphasis added):

> *1. **The arbitrator will order the return of a security deposit**, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*
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> > *• **a landlord's application to retain all or part of the security deposit;** or*
> > *• a tenant's application for the return of the deposit.*
>
> *unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, **whether or not the tenant has applied for dispute resolution for its return**.*

The above guideline allows me to deal with a security deposit if at least one of the two parties has applied for it. In their application, the landlords applied to retain the tenant's security deposit. Therefore, I am able to deal with the tenant's security deposit at this hearing, despite the fact that the tenant did not apply for it.

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that this tenancy ended on February 5, 2016, when the tenant returned the keys to the landlords. I find that the tenant provided a written forwarding address to the landlords by way of her letter, dated February 16, 2016. I find that the landlords were deemed to have received the written forwarding address on February 23, 2016, five days after its registered mailing on February 18, 2016. The landlords applied to retain the deposit on February 26, 2016, which is within 15 days of receipt of the written forwarding address.

However, I find that the landlords' right to claim against the security deposit for damages was extinguished as per section 24(2) of the *Act* because no move-in condition inspection report was completed for this tenancy as required by section 23 of the *Act*. The landlords applied to retain the security deposit for damages. Therefore, as per section 38(6) of the *Act* and RTB Policy Guideline 17, I must double the value of the return of the tenant's security deposit, totaling $1,200.00, even though the tenant did not apply for it, because she did not specifically waive her right to double.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $1,200.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' entire application is dismissed without leave to reapply.

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: October 05, 2016

Residential Tenancy Branch