Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for return of the security deposit. A hearing was held in the landlord's absence on June 5, 2017, but the landlord successfully applied to have the matter reheard under a review consideration on the basis that she had been unable to attend at the original hearing for reasons beyond her control.

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

Service of the tenant's application and the original notice of hearing was not at issue. Nor was service of the notice of hearing for today's hearing at issue.

Issue(s) to be Decided

Is the tenant entitled to recover the security deposit?

Background and Evidence

It was agreed that this tenancy began in March of 2016 and that it was a month to month tenancy with rent due on the first of each month. The tenant testified that there was no formal tenancy agreement but that he had located a piece of paper with some of the information required in a written tenancy agreement after he had submitted his evidence for the original hearing. The landlord testified that she generally has her

tenants sign a written tenancy agreement but could not remember whether she had in this particular case.

It was also agreed that the tenant paid a security deposit of $400.00 at the beginning of the tenancy and that the landlord continues to hold that amount.

The landlord stated that she did not receive the tenant's evidence. The tenant testified that he had included his documentary evidence with his application and notice of hearing, which he sent on December 5, 2016, by registered mail. A copy of the Canada Post registered mail receipt was in evidence. The landlord did not submit that she did not receive the tenant's application and the original notice of hearing. Based on the tenant's testimony and the registered mail receipt in evidence, I deem the landlord to have been served with the tenant's documentary evidence as well as the application and notice of hearing on December 10, 2016, five days after mailing as per s. 90 of the Act.

It was also agreed that the tenant gave notice to end the tenancy on August 4, 2016. The landlord provided a copy of an email from the tenant sent August 4, and stating that he would like to move out on September 4. The tenant says that after receiving this email the landlord asked him to vacate before September 1 and that she then advertised the rental unit in August. There were emails in evidence establishing that the landlord was showing the suite in August.

The tenant also says that the suite was vacant and clean on August 31 but that the landlord did not answer the door when he attempted to return the keys. The landlord stated that the tenancy ended on September 2.

The tenant testified that he sent the landlord his forwarding address by email dated October 20, 2016. A copy of that email was included in the tenant's materials. The landlord said that she had blocked the tenant from sending her emails about three weeks after he had vacated the rental unit because he was sending her "harassing" emails. Those emails were not in evidence. I note that there were several emails in evidence from the tenant in which the tenant asked very respectfully for return of his security deposit.

The parties agreed that there was no written condition inspection report on either move in or move out. The landlord says that this was because the rental unit was clean in both instances. It was also agreed that the tenant did not agree that the landlord could retain the security deposit.

The landlord testified that she applied to retain the security deposit on June 12, 2017, the same date that she applied for a review of the original decision. She was issued a file number for that application, which is included for reference on the cover page of this decision. The landlord further testified that her application was not accepted or processed because she did not have the tenant's correct forwarding address.

The landlord's evidence includes email correspondence with the Residential Tenancy Office dated June 29, 2017, in which the landlord advises that she has obtained the tenant's address, and asks that it be entered into her application to keep the security deposit. On the following day the Residential Tenancy Office emailed the landlord to advise that she would have to enter the address herself, and that her application had been closed two weeks prior, so that she would in fact have to reapply.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> > (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;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> **...**
>
> (6) If a landlord does not comply with subsection (1), the landlord
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> > (a) may not make a claim against the security deposit or any pet damage deposit, and

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

Based upon the facts agreed upon by the parties, I find that the landlord has breached the Act by failing to either return the security deposit or apply for authorization to retain it within 15 days after receipt of the tenant's forwarding address in writing.

I consider that the landlord received the tenant's forwarding address on October 20, 2016, when he provided it to her by email. The landlord would have received the tenant's forwarding address but for the fact that she blocked his email correspondence. Section 71 of the Act allows me to order that a document has been sufficiently served for the purposes of the Act on a specific date, and I determine that the tenant's forwarding address was served on the landlord on October 20, 2016 under this section.

I also note that the landlord would have had another opportunity to receive the tenant's forwarding address if she had conducted the condition inspection report at move-out as she is required to do by the Act. The condition inspection report provides another opportunity for the tenant to supply the landlord with a forwarding address in writing.

If I am incorrect in the above, I have already found that the landlord received the tenant's evidence when she received his application and the original notice of hearing, on December 10, 2016. The tenant's evidence contained the email from him dated October 20, which included his forwarding addressed. The landlord also received the tenant's forwarding address in writing on June 29, 2017 from the Residential Tenancy Office. As of today, however, the landlord has still not applied for authorization to retain the security deposit.

The security deposit is held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlord may still file an application for loss of rent. However, the issue of the security deposit has been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlords pay the tenant the total sum of **$800.00**.

Conclusion

The tenant is 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 it, it 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 s. 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2017

Residential Tenancy Branch