Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenant by Canada Post Registered Mail. The tenant acknowledged receipt of these documents and is found to have been duly served under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Testimony provided by both parties explained that this tenancy began on September 1, 2013 and ended on June 30th, 2017. Rent was $1,525.00 per month and deposits of

$762.50 (security) and $381.25 (pet) were collected at the outset of the tenancy. The security deposit continues to be held by the landlord.

The landlord explained that he was seeking an order to retain the tenant's security deposit and a monetary award of $1,565.00 in satisfaction for unpaid rent for the month of July 2017. The landlord argued that under the terms of their tenancy agreement, the tenant provided him insufficient notice of her intention to vacate the rental unit. As part of his evidentiary package, the landlord supplied a copy of the tenancy agreement signed between the parties and an addendum.

An examination of the tenancy agreement signed by the parties reveals conflicting notice periods for ending a tenancy. Section 14 of the *Residential Tenancy Agreement* signed by both parties on August 15, 2013 shows that the parties agreed to the term Ending the Tenancy which states, "The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]"

The addendum notes, "Tenant will provide the landlord 2 months written notice to end the tenancy."

When asked to comment on this, the landlord said Section 14 provides that a tenant must provide *at least* one month written notice but does not prevent the parties from agreeing to notice above this time period.

Additionally, the landlord said that he suffered a loss because the tenant did not provide him with two month's written notice as per the terms of the addendum to the rental agreement signed by the parties. Furthermore, the landlord stated that while he received an email on May 31, 2017 from the tenant informing him of her intentions to vacate the suite on June 30, 2017, formal written notice was not received on that day. The landlord continued by arguing that the tenant's formal written notice should be considered late because she sent him a copy of her formal written notice by way of Canada Post Registered Mail on May 31, 2017, and therefore, under the deemed service provisions of section 90 of the *Act*, that it was received on June 4, 2017.

The landlord said that on June 1, 2017 he travelled overseas and did not return to the province until the end of Jun 2017. He said that because of these travels he was unable

to attend to the property and could take no steps to re-rent it for July 2017. The landlord testified that the premise was occupied by a new tenant for August 1, 2017.

The tenant did not deny the facts presented at the hearing but explained that the landlord acknowledged and responded to the email she sent to him on May 31, 2017 informing him of her intention to vacate the rental suite at the end of June 2017.

Analysis

The landlord has applied for a monetary award of $1,565.00 representing unpaid rent for the month of June 2017. He stated that the tenant did not provide adequate notice of her intention to vacate the property and broke a term of their tenancy agreement which stated that the tenant needed to provide 2 month's written notice.

The first issue to consider in this matter is the landlord's argument that he did not receive sufficient notice of the tenant's intention to vacate the rental unit. At the hearing, the landlord said that while the tenant sent him an email on May 31, 2017 informing him that she was moving out at the end of June 2017, he did not have formal, written notice as is required under the *Act* until the first week of June 2017. Both parties explained that the tenant sent a copy of her formal written notice to the landlord by way of Canada Post Registered Mail on May 31, 2017.

Section 71(2)(b) allows an arbitrator to find that a document has been served in a manner that is not consistent with sections 88 & 89 of the *Act*. It states:

The director may make any of the following orders:

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

I find that by receiving and replying to the tenant's email on May 31, 2017 the landlord had sufficient knowledge and notice of the tenant's intention to vacate the rental unit at the end of June 2017. The landlord was not unfairly prejudiced by having received the tenant's notice sent by way of Canada Post Registered Mail of May 31, 2017, because he was aware of her intentions to vacate the property the same day the written formal notice was sent.

The second aspect of the landlord's application concerns a purported violation of the tenancy agreement by the tenant in providing him with one month's written notice of her

intention to vacate the property, and not two month's as is required by the addendum signed by the parties.

I find that the addendum and the tenancy agreement signed by the parties provide conflicting information on the requirements for notice so it cannot be concluded that the notice period was two months rather than one. Furthermore, it is apparent that the alleged loss in this case occurred because the landlord failed to take reasonable steps to rent the unit after he had received actual notice from the tenant.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results… A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

Little evidence was presented to the hearing demonstrating any steps that the landlord took to mitigate his loss. He explained that he could take no steps to re-rent the unit or to mitigate his loss because he was out of the country for the first three weeks of June 2017. *Policy Guideline #5* states that *reasonable* efforts must be made to rent the unit. It would be inequitable to punish the tenant for a trip that the landlord had taken and which he says prevented him from taking *reasonable* steps to re-rent the suite. Furthermore, the landlord could have hired an agent or posted notices online while he was abroad to take steps to re-rent the suite for July 2017. I find that the landlord has presented little evidence of any reasonable efforts that were made to minimize the damage or loss. The landlord's application for a monetary order is dismissed.

In addition to an application for a Monetary Award, the landlord has applied to retain the tenant's security deposit.

While the landlord has met the requirements to apply to retain a tenant's security deposit pursuant to section 38 of the *Act*, I find no reason as to why the landlord should be permitted to retain it. Section 38(3) & (4) state, "A landlord may retain from a security

deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid. Furthermore, a landlord may retain an amount from a security deposit if 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 after the end of the tenancy, the director orders that the landlord may retain the amount." None of these requirements have been met in this case.

The landlord is directed to return the security deposit to the tenant.

As the landlord was unsuccessful in his application must bear the cost of his own filing fee.

Conclusion

The landlord's application for a monetary award is dismissed.

The landlord's application to retain the tenant's security deposit is dismissed. The landlord is ordered to return the security deposit to the tenant.

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: November 27, 2017

Residential Tenancy Branch