Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on July 30, 2018. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act (*the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

The Tenant attended the hearing. The Landlord did not attend the hearing. The Tenant testified that he sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on December 15, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received this package on December 20, 2017.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant stated that rent was set at $2,400.00 per month. The Tenant further stated that the Landlord still holds his $2,400.00 security deposit, and will not return it to him. The Tenant stated that he is looking for the return of this deposit, less the $300.00 they agreed the Landlord could keep for some minor damage.

The Tenant stated that he moved out of the rental unit on November 1, 2017, and did the move-out inspection with the Landlord on November 2, 2017. At the time of the move out inspection, the Tenant stated that he and the Landlord agreed that the Landlord could retain $300.00, and that the Tenant would get the remainder back. The Tenant stated that throughout his tenancy, he communicated with the Landlord via email. The Tenant provided some of these emails into evidence. The Tenant stated that on December 8, 2017, he provided his forwarding address in writing to the Landlord and asked for the return of the remainder of his deposit, $2,100.00. The Tenant stated that the Landlord acknowledged getting the email with his forwarding address and said he would return the amount they agreed upon. The Landlord replied to the Tenant's email about the security deposit on the same day the Tenant sent it. However, he never did return the deposit. The Tenant provided a copy of this email chain into evidence.

The Tenant stated that he is also looking for compensation because the Landlord did not give him a proper notice to end tenancy. The Tenant stated that on October 3, 2017, the Landlord sent the Tenant an email saying that the house would soon be sold. The Landlord sent the Tenant another email on October 13, 2017, saying that the tenancy agreement would be coming to an end. The Tenant stated that he never got a proper Notice to End Tenancy on an approved form. The Tenant stated that he decided to accept the email and he moved out of the rental unit on November 1, 2017. The Tenant stated that he would like to be compensated one month's rent because the Landlord never used a proper notice.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In determining that the Landlord received the Tenant's forwarding address "in writing" when it was sent by email on December 8, 2017, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

I was further guided by section 6 of the *Electronics Transactions Act,* which stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As an email is capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

However, section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. Given that the Tenant has provided an email from the Landlord on December 8, 2017, indicating he received the Tenant's forwarding address in writing that day, I find that the Landlord was sufficiently served with the Tenant's forwarding address on December 8, 2017.

In reaching the conclusion that the forwarding address was sufficiently served by email message I was influenced, to some degree, by the Tenant's testimony and evidence that he communicated with the Landlord via email on several occasions.

I note the Tenant stated he authorized and agreed with the Landlord that he keep $300.00 of the $2,400.00 security deposit at the move-out inspection. The Tenant provided some evidence to support that this agreement took place by way of the emails provided into evidence, where the Landlord references that he and the Tenant made an agreement about this matter. Further, the evidence before me indicates that both parties participated in the condition inspections. Based on the evidence before me, I find neither party extinguished their right to the security deposit. Also, I find there is sufficient evidence and testimony to establish that the parties agreed that the Landlord could keep $300.00 of the deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until December 23, 2017) to either repay the remainder of the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

As per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the remaining ($2,400.00 less $300.00) amount of the security deposit. In other words, the Tenant is entitled to recover $2,100.00 x 2, which amounts to $4,200.00.

Next, I turn to the second part of the Tenant's claim. The Tenant is seeking compensation equivalent to one month's rent because the Landlord did not give him a proper notice to end tenancy. In consideration of this, I agree with the Tenant that the email provided is not a valid notice to end tenancy as it does not meet the form and content requirements set forth under section 52 of the Act. As it was not a lawful notice to end tenancy, the Tenant was not required to vacate after receiving that email from the Landlord. Subsequently, when the Tenant chose to move out on November 1, 2017,

I find he did so voluntarily, as he was not lawfully required to vacate the unit after getting this type of a message from the Landlord. I find the Tenant is not entitled to compensation for this issue.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partially successful in this hearing, I also order the Landlord to repay the $100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for $4,300.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of **$4,300.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 31, 2018

Residential Tenancy Branch