Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNRL-S, FFL
For the tenant : MNSDS-DR, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the "landlord Application"), on February 24, 2020. They seek a monetary order to recover money for unpaid rent, by holding the security deposit or pet deposit paid by the tenant. Additionally, they seek to recover the application filing fee.

The tenant filed an Application for Dispute Resolution (the "tenant Application") by Direct Request, on March 3, 2020 seeking an order for a return of the security deposit. Additionally, they seek to recover the application filing fee.

The matter proceeded by way of a participatory hearing because the tenant Application -- being a Direct Request -- cannot be considered by that method when there is a cross-application by the landlord in place.

The tenant stated that they hand-delivered the notice of this dispute hearing to the landlord who accepted it personally. This was two days after they applied. They also stated they received a package of materials prepared by the landlord for this hearing. This was a few days in advance of the hearing. I am satisfied the tenant sufficiently served the landlord in due course. Moreover, this hearing originated from the landlord's application; therefore, I find they were aware of this hearing.

Preliminary Matter

The landlord did not attend the hearing, though the teleconference hearing remained open until 2:10 p.m. to enable them to call in to this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the landlord was not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply.

The landlord submitted their prepared evidence to this office when they made their application. The tenant confirmed they received that evidence. I consider Rule 7.4 of the Rules of Procedure which states:

> Evidence must be presented by the party who submitted it, or the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I find the landlord did not attend the hearing at the scheduled time that was provided to them when they applied. In the absence of the landlord, and considering the tenant attended this hearing, I dismiss the landlord's application without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for their Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant stated they did not receive a copy of the tenancy agreement, and there is no copy of this agreement in the evidence before me. They spoke to the history of the short-term tenancy in the hearing as follows:

- they paid for the whole month of December rent $1,400.00;
- they paid the $700.00 security deposit on November 20, 2019 – they provided a copy of this cheque in their evidence;
- they moved in to the unit on November 25, 2019 – they paid for this extra week before the tenancy start date of December 1, 2019;
- the tenant and landlord agreed that the tenant, their mother and grandmother would occupy the unit;
- by "December 6 or 7" the tenant informed the landlord that the unit was "very loud and smelly" – thus the tenant advised the landlord that the tenancy would not continue through January 2020;
- the tenant and other occupants moved out of the unit on December 15, 2019 – at that time they asked the landlord for the return of the security deposit, and the landlord stated "you can't have [it] because you aren't staying for January";
- The tenant returned from travelling in early January and underwent a self-quarantine. They did not contact the landlord initially at that time.

The tenant submitted a copy of a letter dated February 13, 2020, to provide the landlord their forwarding address. They stated they went to give the landlord this letter and they would not take it. They placed this letter into the landlord's mailbox and then sent a text message to the landlord that showed the content of the letter. They provided an image of the text message to the landlord.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find as fact, based on the undisputed evidence and testimony, the tenant gave their forwarding address to the landlord as provided for in their evidence. They attempted to hand it to the landlord personally, as necessary, and then placed it in the landlord's mailbox. Thereafter, they tried to ensure the landlord had this information via text message. A copy of the letter is in the evidence.

Although the landlord applied to claim against this deposit within 15 days, they did not attend this hearing to pursue the claim.

On this point, I find the evidence of the tenant is undisputed. I am satisfied that the tenant's new forwarding address was within the landlord's knowledge, as necessary, by February 13, 2020. The landlord has not returned the security deposit. By not pursuing the claim against the deposit, I find the landlord has abandoned that claim; in effect, the landlord's claim is cancelled, and I treat the matter as if the landlord did not apply. I find the landlord's actions thus constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit, as per section 38(6) of the *Act*.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

In the absence of the applicant landlord I dismiss their Application for Dispute Resolution in its entirety and without leave to reapply.

I order the landlord to pay the tenant the amount of $1,500.00. This is double the security deposit amount of $700.00. This amount also includes the $100.00 filing fee. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) and 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: June 5, 2020

Residential Tenancy Branch