Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RRP, MNDCT

Introduction

The tenant applies to recover a $550.00 security deposit. She also seeks an order that the landlord return her personal property and/or for a monetary award for the value of the property.

The application was given an early hearing date and a limited time slot as the tenant is applying for return of her security deposit. Her claim for return of property and/or its value are claims unrelated to the matter of the deposit. Pursuant to Rule 2.3 of the Rules of Procedure I dismiss the tenant's claim for return of personal property and/or for a monetary award for its value, with leave to re-apply.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Having regard to s. 38 of the *Residential Tenancy Act* (the "*RTA*") is the landlord obliged to return the deposit at this time? If so, is the tenant entitled to a doubling of the deposit?

Background and Evidence

The rental unit is a two-bedroom basement suite in the landlord's house. The tenancy started in September 2018. The monthly rent was $1100.00. The landlord received and still holds the tenant's $550.00 security deposit.

The tenancy ended January 24, 2019. The landlord had obtained an order of possession. The tenant says the landlord changed her door lock and thereby captured all her belongings inside. The landlord indicates there was a bailiff involved, the door lock was not changed and that the tenant had moved out already.

In March 2019 the tenant brought an application for return of property and/or a monetary award for its value, almost identical to this one (file number shown on cover page of this decision). The decision from that application is not readily retrievable. From the information given by the parties at this hearing it appears the landlord attended the hearing of that matter but that the application was dismissed with leave to re-apply due to the tenant's failure to property serve the landlord with the application.

It is the tenant's position at this hearing that the address she gave for herself in her March 2019 application was a forwarding address in writing and that the landlord was responsible to account for the deposit by either repaying it or making an application to keep it, within the following fifteen days, as required by s. 38.

She seeks the doubling penalty imposed by s. 38.

Analysis

Section 38 of the *RTA* provides that once a tenancy has ended and once the tenant has provided her landlord with her "forwarding address in writing" the landlord must, within the following 15 days, either repay the deposit or make an application to retain all or a portion of it. A landlord who fails to do either of those two things within the 15 day period must pay the tenant double the deposit.

The term "forwarding address in writing" is not defined in the *RTA*. Practically speaking it would be the address a tenant wishes to be sent mail or other items received at the

old address. On occasion it may well be an address other than a tenant's new residential address, for example: an anticipated long term address or one which the tenant does not wish to disclose to her former landlord.

The address provided in an application for dispute resolution is an address for service od documents relating to the dispute disclosed by the application. It may be a fax number (see s. 88(h) of the *RTA*).

Often the address a tenant gives as a" forwarding address in writing" will be the same as the one given for her in an application for dispute resolution, namely the address of her current residence. But not always. The address for service may well be the address of a lawyer or advocate for the tenant; people without authorization to accept a tenant's old mail and packages or a security deposit cheque.

Such a circumstance may only happen rarely, but it can happen and that means that a tenant's address for service is <u>not always</u> her forwarding address in writing. The fact of the matter can only be determined at a hearing, if at all. By the time a matter such as this one gets to its hearing it is too late for a landlord to find out that the tenant's address for delivery in an application for dispute resolution was also her "forwarding address in writing." The 15 day window has passed and the landlord is exposed to the doubling penalty.

For these reasons I find that the tenant, by giving an address for service in her application was not automatically giving the forwarding address in writing required by s. 38. As a result, the 15 day period in s. 38 has not begun to run.

At this hearing it was confirmed that the tenant's forwarding address is the address she has inserted as hers in her application for dispute resolution. The parties were informed that since this tenancy has ended and since the landlord now has the tenant's forwarding address in writing, the 15 day window in s. 38 starts today. The landlord must either repay the deposit or make application to keep it within the next 15 days, else suffer the doubling penalty.

<u>Conclusion</u>

The tenant's application, in its entirety, is dismissed with leave to re-apply.

This decision was rendered orally at hearing and 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 19, 2020

Residential Tenancy Branch