Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWELVE OAKS BY MARQUEE DEVELOPMENTS INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 09, 2020 (the "Application"). The Tenant applied for return of double the security and pet damage deposits as well as reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The parties confirmed the correct Landlord name and correct rental unit address, both of which are reflected on the front page of this decision.

The Tenant confirmed he has received the original security and pet damage deposits back and is only seeking double the deposits in the Application.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package and Tenant's evidence. The Agent advised that the hearing package was received October 07, 2020 and therefore not within the required timeframe. The Agent confirmed the Landlord had time to review the Application and prepare for the hearing.

I acknowledged that the hearing package was not served in accordance with rule 3.1 of the Rules of Procedure. However, the Agent acknowledged the Landlord had time to review the Application and prepare for the hearing. Further, I found that the Landlord receiving the Application more than two months before the hearing more than sufficient, particularly given the simple issues before me. I told the Agent that given these points,

we would be proceeding with the Application. The Agent did not raise a further issue in relation to this.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The first tenancy agreement started May 26, 2017. The Tenant paid a $1,278.75 security deposit and $1,278.75 pet damage deposit. The parties agreed the security deposit was carried over to the second tenancy agreement.

The parties agreed the Tenant vacated the rental unit September 24 or 29, 2018. Both parties agreed the tenancy ended September 29, 2018 at the latest.

The Agent raised an issue in relation to whether a tenancy continued until September 24 or 29, 2018. The Tenant had submitted a prior RTB decision where the second tenancy agreement was before the Arbitrator. The Arbitrator found the following:

> I find that the Act does retain statutory jurisdiction in this matter. Title to the property passed in May, 2017, and I find that the Tenants are now occupying the rental unit under a licence to occupy, which is included in the definition of a tenancy agreement.

The Arbitrator also found as follows:

> The Tenants applied to cancel a Notice to End Tenancy for Landlord's Use of Property; however no such notice was issued. The Tenants are not legally obliged

> to vacate the rental unit unless and until a Notice is issued under the provisions of Section 44 of the Act.
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> I also note that the Act precludes "vacate" clauses unless they meet the requirements of the Act the regulation to the Act.

The prior Arbitrator found this was a licence to occupy covered by the *Act* and that it would not end other than in accordance with the *Act*.

After briefly discussing the prior RTB decision, the parties agreed the Tenant lived in the rental unit until September of 2018 as a tenant under the *Act*.

The parties agreed the Tenant's forwarding address was provided on the Condition Inspection Report (the "CIR"). The parties did not know if the CIR was done September 24 or 29, 2018 as it includes both dates. The Agent acknowledged the Landlord received the forwarding address on the CIR on September 24 or 29, 2018.

The parties agreed on the following. The Landlord did not have an outstanding monetary order issued by the RTB against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. The Landlord did not apply to the RTB to keep the security or pet damage deposits.

I note that the CIR shows A.H., the co-tenant, did agree to the Landlord keeping the security and pet damage deposits at section "Z" "2". However, neither party raised this during the hearing and both parties specifically stated that there was no such agreement.

The parties agreed the security and pet damage deposits have been returned at this point.

The Agent testified as follows about the return of the security and pet damage deposits. A cheque was issued October 17, 2018 for the full amount of the deposits. She "assumes" the cheque was sent in the mail to the Tenant. It is "likely" the cheque was sent by regular mail. The cheque was returned and a copy of the void cheque is in evidence.

The Agent relied on a copy of the void cheque, emails from the Landlord's lawyer and emails between her and the Tenant to show the cheque was sent October 17, 2018.

The Agent further testified as follows. The Landlord then sent the security deposit back to the Tenant December 12, 2018. Only the security deposit was sent because the Tenant only asked for his "bond deposit". The Tenant did not mention the pet damage deposit. When the Tenant did mention the pet damage deposit, the Landlord sent another cheque once they verified a pet damage deposit was paid. The pet damage deposit was sent February 22, 2019.

The Tenant confirmed he never received the October 17, 2018 cheque. The Tenant acknowledged receiving the security deposit back for the first time December 12, 2018. The Tenant acknowledged receiving the pet damage deposit back for the first time February 25, 2019.

I raised with the Agent the timing of the October 17, 2018 cheque and noted that it was not sent back to the Tenant within 15 days of the later of the end of the tenancy or the Landlord receiving the Tenant's forwarding address in writing. The Agent advised that she thought the 15 days was 15 business days.

The CIR shows a move-in inspection was done May 11, 2017, both parties participated and signed the CIR. The Tenant agreed these points are correct. The Agent said she assumes these points are correct but did not have the CIR in front of her.

The CIR shows a move-out inspection was done September 24 or 29, 2018, both parties participated and signed the CIR. The Tenant and Agent agreed these points are correct.

During the hearing, the Agent raised an issue in relation to the timing of the Application. The Agent also submitted that the Landlord intended to comply with the requirements for returning the security and pet damage deposits.

I note that both parties submitted evidence and although I have reviewed it I do not find it necessary to detail here as all of the relevant facts were agreed upon by the parties or it is not necessary for me to decide which version is more likely given the timing involved.

Analysis

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended September 29, 2018 at the latest.

Given the testimony of the parties, I accept the Landlord received the Tenant's forwarding address in writing, on the CIR, on September 24 or 29, 2018.

I find September 29, 2018 to be the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from September 29, 2018 to repay the deposits in full or file a claim with the RTB against the deposits. The 15 days is not business days. Therefore, the Landlord had until October 14, 2018 to comply with section 38(1) of the *Act*.

Even accepting that the Landlord sent a cheque for the security and pet damage deposits to the Tenant October 17, 2018, the Landlord did not comply with the 15-day timeline in section 38(1) of the *Act*. I note that it is not the intention of the Landlord that is relevant. The Landlord was required to comply with section 38(1) of the *Act* and did not do so.

Sections 38(2) to 38(4) of the *Act* state:

> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> > (a) the director has previously ordered the tenant to pay to the landlord, and
> >
> > (b) at the end of the tenancy remains unpaid.

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> > (a) 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…

Given the CIR and testimony of the parties, I accept that the Tenant or co-tenant participated in the move-in and move-out inspections. Therefore, the Tenant did not extinguish his rights in relation to the security or pet damage deposits. Section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I find the Landlord did not have an outstanding monetary order from the RTB against the Tenant at the end of the tenancy. There is no evidence before me that the Landlord did. Section 38(3) of the *Act* does not apply.

Given the testimony of the parties, I find there was no agreement in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. I note that the CIR seems to suggest otherwise. However, neither party raised this, both parties agreed there was no such agreement and the Landlord did eventually return the security and pet damage deposits which does not accord with the Landlord having permission to keep them. In the circumstances, I am not satisfied section 38(4) of the *Act* applies.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security and pet damage deposits and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord was not permitted to claim against the security or pet damage deposits and had to return double the deposits to the Tenant pursuant to section 38(6) of the *Act*.

The Tenant was entitled to return of $5,115.00 as double the security and pet damage deposits. The Landlord returned the original amount of the security and pet damage deposits being $2,557.50. Therefore, the Landlord must return a further $2,557.50 to the Tenant. There is no interest owed on the security or pet damage deposits as the amount of interest owed has been 0% since 2009.

I also note the following in relation to some of the submissions of the Agent. It was not the Tenant's responsibility to ask for his security and pet damage deposits back. As soon as the tenancy was over and the Landlord had the Tenant's forwarding address in writing, the time limit in section 38(1) of the *Act* started. The Landlord was required to

know and understand their obligations under section 38(1) of the *Act* and were expected to comply with those obligations. Further, the Landlord was expected to know what deposits they held and to deal with those deposits in accordance with section 38(1) of the *Act* without the Tenant having to check up on the deposits or specifically ask for them back.

In relation to the timing of the Application, I note that it was filed September 09, 2020. Pursuant to section 60(1) of the *Act*, the Tenant had two years from the end of the tenancy to file the Application. The tenancy ended September 24 or 29, 2018 and therefore the Application was filed in time.

As the Tenant was successful in the Application, I award him reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to $2,657.50. I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is entitled to $2,657.50 and is issued a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court 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 *Act*.

Dated: December 21, 2020

Residential Tenancy Branch