Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

On September 20, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the tenant's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex-parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

> I find that the [tenancy] agreement includes the following wording:
>
> > *"This form applies if a roomer is living with a homeowner, or a member of the homeowner's immediate family, and sharing a kitchen and/or bathroom with the homeowner. The Tenant Protection Act does not apply to such an agreement, which is a license, not a lease."*
>
> For this reason, I find that there is a question regarding whether I have jurisdiction to decide this matter. I find that a participatory hearing is required in order to determine jurisdiction.

I have been delegated authority under the *Act* to consider the tenant's application for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. The landlord advised that she was calling from a hospital bed but was willing and able to proceed to have the hearing

proceed. The landlord did not seek an adjournment of the hearing due to medical reasons.

As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings but stated she does not have the tenant's evidence or the adjudicator's order.

The tenant JP testified that the evidence was sent to the landlord in the original Direct Request package sent to the landlord on August 11, 2021. The adjudicator acknowledged the tenant's proof of service document indicating the Notice of Direct Request Proceedings and a copy of the supporting documents as being served. The tenant testified that the adjudicator's order was sent to the landlord together with the Notice of Dispute Resolution Proceedings for this hearing on September 23, 2021 by registered mail. The receipt from Canada Post and the tracking number was provided as evidence by the tenant and the tracking number is recorded on the cover page of this decision. I deem the landlord served with the Notice of Dispute Resolution Proceedings package on September 28, 22021, five days after it was sent by registered mail, pursuant to sections 89 and 90 of the *Act*.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Does the Residential Tenancy Branch have the jurisdiction to render a decision in this dispute?
If so, is the tenant entitled to a return of the security deposit?
Can the tenant recover the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is a basement unit in a single detached home. The landlord is the owner of the home. She occupies the upper unit of the home while the lower rental unit was shared by this pair of tenants and another couple on a separate tenancy agreement. Both the landlord and tenant testified that the landlord never shared a kitchen or bathroom with the tenants during the tenancy.

At this point in the hearing, I advised the parties that I had the jurisdiction to hear this dispute since section 4(c) of the *Act* [What the *Act* does not apply to] only applies to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The tenancy commenced on March 1, 2021, with rent set at $1,050.00 per month payable on the first day of each month. A security deposit of $500.00 was collected by the landlord which the landlord acknowledges she continues to hold. The tenancy lasted less than two months and the tenants gave notice that the tenancy would end at the end of April. The tenants vacated the rental unit in mid-April 2021.

The tenant gave the following testimony. He recalls doing a “walkthrough” with the landlord at the beginning of the tenancy, but he was never given a condition inspection report by the landlord. The tenant does not remember if the landlord did a “walkthrough” with him at the end of the tenancy, but the landlord never gave him a condition inspection report. The tenant recalls the landlord took issue with some staining to bedsheets from cola, damage to window screens and sawdust left on the ground from him doing some carpentry work. The tenant did not agree to any deductions from his security deposit by the landlord.

On June 20, 2021, the tenant sent the landlord his forwarding address in writing by registered mail. The tracking number is recorded on the cover page of this decision. During the hearing, the tenant looked up the tracking number and testified it was received by the landlord on June 28, 2021, at 7:41 p.m.

The landlord gave the following testimony. She can’t remember whether she did a condition inspection report with the tenants at the commencement of the tenancy. She “usually” does one when new tenants move in, though. She doesn’t recall whether a copy was provided to the tenants after they moved in. The landlord testified a walkthrough was done with the tenants at the end of the tenancy and the parties talked about issues and problems. The landlord testified she doesn’t remember if she brought a

condition inspection report form to the walkthrough or if a copy was given to the tenants after the tenancy ended.

The landlord acknowledges she did not get the tenant's written agreement to deductions from the security deposit although they verbally agreed they did some damage to the unit. The landlord testified she did not file an application for dispute resolution seeking compensation for damage to the rental unit or for permission to retain the security deposit.

The landlord doesn't remember whether she received the tenant's written notice of forwarding address as it was a crazy time for her. In April 2021 the landlord was admitted to the hospital and again in July 2021. She has "bad memories" from something that happened in her life. She is currently in the hospital since being admitted earlier this month.

Analysis

Pursuant to section 23, The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Both the landlord and tenant must sign a condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not give a copy of the condition inspection report to the tenant in accordance with the regulations.

Moreover, pursuant to section 35(4), at the end of the tenancy, both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. If the landlord does not complete a condition inspection report with the tenant at the end of the tenancy and give a copy of it to the tenant in accordance with the regulations, the landlord's right to claim against it **is extinguished** pursuant to section 36(2).

Lastly, section 38(1)(b) of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of
(a) the date the tenancy ends, and
(b) **the date the landlord receives the tenant's forwarding address in writing,**
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord received the tenant's forwarding address at 7:41 p.m. on June 28, 2021 pursuant to sections 88 and 90 of the *Act*.

I find that at the commencement of the tenancy, the landlord did not sign a condition inspection report and provide a copy to the tenant, contrary to section 23 of the *Act*. I also find that at the end of the tenancy, the landlord similarly failed to provide a copy of a signed condition inspection report to the tenant contrary to section 36 of the *Act*. Lastly, I find the landlord did not repay the security deposit to the tenants within 15 days after the tenancy ended (April 30, 2021) or the date she received the tenant's forwarding address (June 28, 2021).

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and **must pay the tenant double** the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Since the landlord has failed to comply with the requirements set forth in Section 38 and as per Section 38(6)(b) I find the landlord must pay the tenants double the amount of the security deposit. [$500.00 x 2 = $1,0000]. I award the tenants a monetary order in that amount.

As the tenant's application was successful, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of **$1,100.00**. This 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 *Residential Tenancy Act*.

Dated: April 20, 2022

Residential Tenancy Branch