Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, CNR, MNDC, MNSD, RP, LRE, O

Introduction

This hearing dealt with two related applications. One was the landlord's application for a monetary order and an order permitting retention of the security deposit and pet damage deposit in partial satisfaction of the claim.

The second application was the tenants'. When they filed their original application for dispute resolution on July 9, the tenants asked for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and an a monetary order.

On September 2, just eight days before the date set for hearing, the tenants amended their claim by increasing the amount claimed from $600.00 to $8814.62 and adding claims for loss of quite enjoyment which included claims for harassment by the landlord and illegal entry by the landlord, as well as compensation for the landlord's failure to provide services or facilities as promised by the tenancy agreement.

The female tenant left the amended claim and evidence package of almost 100 pages at the landlord's place of business at 4:00 pm on September 2. She also mailed it to the landlord by registered mail that evening.

The landlord acknowledged receipt of the documents on September 3. The landlord stated that he had not had time to prepare his evidence in response to the tenants' amended claim and he was not prepared to go ahead on that part of the claim at this hearing.

The *Residential Tenancy Branch Rules of Procedure* provide that applicants wishing to amend an application for dispute resolution are required to provide their amended application to the Residential Tenancy Branch and to the other side not less than 14 days before the hearing. The same time limit applies to evidence. As much as possible evidence is support of an application is to be served on the respondent with the application for dispute resolution. If the evidence is not available at the time the

application is file the applicant must ensure that the other party and the Residential Tenancy Branch receive evidence no later than 14 days before the hearing.

Any party who does not comply with these timelines must be prepared to explain to the arbitrator why the evidence was not available at the time that their application was filed or when they served and submitted their evidence. An arbitrator may decide to accept late evidence provided that the acceptance of late evidence does not unreasonable prejudice the other party.

These rules serve two purposes:

1. To ensure that the respondent on any application has sufficient time to review the material served on them; and to prepare, serve and file any relevant evidence of their own, in adequate time before the hearing.

2. To ensure that Residential Tenancy Branch hearing time is efficiently used. Landlords and tenants wait for many weeks for an opportunity to tell their story to an arbitrator. Hearing time is a valuable commodity; it should not be wasted by disorganized or unprepared participants. Hearings that have to be adjourned because a respondent has not had sufficient time to file a response and hearings where the arbitrator has not had adequate time before a hearing to review the evidence and prepare for the hearing are not an efficient use of limited hearing time.

In this case the tenant had filed her application for dispute resolution on July 9, 2014. She amended her claim on September 2. The tenant offered the following in explanation for the delay:

- She moved out of the rental unit on July 31. Her health is not very good and she found the move very difficult and stressful.
- It took her some time to research everything.
- She was using the computer facilities at the public library and was limited to one hour per day.
- She was waiting for the receipt from the moving company.

While I accept that the tenant may have had a difficult time getting her material together none of her reasons are particularly compelling. Accordingly, I am not prepared to accept either the late amendment to the application for dispute resolution or the late evidence.

The claims contained in the amended application for dispute resolution are unrelated in law to the claims contained in the application. Pursuant to Rule 2.3 I am dismissing all the claims contained in the tenants' amended application for dispute resolution with leave to re-apply.

As the tenants have moved out of the rental unit the application to set aside the notice to end tenancy is no longer relevant. It is dismissed.

The hearing proceeded on the landlord's claim for rent and the parties' claims against the security deposit and pet damage deposit only.

As the parties and circumstances are the same on both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Is either party entitled to a monetary order and, if so, in what amount?
- What disposition should be made of the security deposit and pet damage deposit?

Background and Evidence

The tenancy formally commenced February 1, 2013, although the tenants actually moved in a few days earlier, as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of $1200.00 was due on the first day of the month. The tenants paid a security deposit of $600.00 and a pet damage deposit of $150.00.

The parties walked through the unit at the start of the tenancy but a move-in condition inspection report was not completed.

The tenants moved out of the rental unit on July 31, 2014, having given one month's notice to end tenancy in writing. A move-out inspection was not conducted and a move-out condition inspection report was not completed.

The landlord and tenants had been fighting before the end of the tenancy. Both parties had filed their respective applications for dispute resolution in July, before the end of the tenancy. Because of the issues between them the tenants did not pay the July rent.

On July 31, 2014, the tenant sent the landlord an e-mail advising the landlord of her new address. She subsequently provided the same information in a fax dated August 27, 2014. The landlord acknowledged receipt of the fax.

The landlord has not attempted to re-rent the unit as he is selling it.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent. This same information is contained in the notice to end tenancy that was served on the tenants. The tenants did not have such an order. Accordingly, the tenants are responsible for the July rent in the amount of $1200.00.

Subsection 7(2) of the *Residential Tenancy Act* provides that a landlord or tenant who claims compensation for damage or loss that has resulted from the other's non-compliance with the act, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. The landlord has not attempted to rent the unit since the tenants moved out at the end of July. Accordingly, his claim for the August and September rents is dismissed.

With regard to the security deposit section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue. In the present case, the landlord filed his application claiming against the security deposit before the tenancy ended, before the deadline for doing so. As a result, he is not subject to the section 38(6) penalty.

As the landlord was substantially successful on his application I find that he is entitled to reimbursement from the tenant of the $50.00 he paid to file it.

In summary I find that the landlord has established a total monetary claim of $1250.00 comprised of the unpaid July rent in the amount of $1200.00 and the $50.00 fee he paid to file this application. Pursuant to section 72(2) I order that the landlord retain the security deposit of $600.00 and the pet damage deposit of $150.00 in partial satisfaction

of the claim and I grand the landlord an order under section 67 for the balance due of $500.00.

Conclusion

a. An order has been made severing the tenants' amended claim and dismissing it with leave to re-apply.
b. A monetary order in favour of the landlord has been made. If necessary, this order may be filed in the Small Claims 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: September 23, 2014

Residential Tenancy Branch