Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; and one of the landlords.

Part way through the hearing after the tenant's advocate had presented the tenant's claim and I had asked several questions regarding evidence to support her claim the tenant's advocate requested an adjournment.

The advocate indicated that it was only a few days prior to the hearing that she became involved and that the tenant had a disability that prevented her from knowing what she needed to do to present her case. She submitted that the tenant would not have been aware of the need to provide evidence of mould; loss of income; or medical documentation.

I noted that the tenant had indicated in her initial submission of evidence that she had another person who was going to be acting as her advocate and as such that person could have prepared the tenant's case for her. The advocate testified that that person is no longer available because she got a different job.

The advocate also submitted that the tenant had been in and out of hospital for the past month and a half. The advocate could not provide an explanation as to why the tenant's claim and evidence could not have been gather, served, and submitted to the Residential Tenancy Branch in June, July, August or September 2014.

The landlord objected to an adjournment on the grounds that they would like these matters resolved and they have already been waiting several months.

Residential Tenancy Branch Rule of Procedure 6.4 sets out the criteria I must consider for granting an adjournment as follows:

1. The oral and written submissions of the parties;

2. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
3. Whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
4. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking adjournment; and
5. The possible prejudice to each party.

Adjournments are not generally an opportunity for a party to take a break from the proceedings so that they can obtain more evidence that could have or should have been submitted in accordance with the Rules of Procedure – that is with their Application for Dispute Resolution or at least no later than 14 days prior to the hearing. This is especially true after the hearing has begun and the applicant realizes that their evidence, or lack of, does not appear to be supporting their claim.

In the case before me, I find that as this was the tenant's Application it was incumbent upon her or either one of her advocates to ensure that she was prepared for her claim and had sufficient evidence to substantiate her claim and that she had served it on the landlord and the Residential Tenancy Branch.

While I accept that there was no intentional action that led to the need for the adjournment request I do find that applicant and her advocates neglected to be prepared to present the claim and as such I find it would be prejudicial, in regard to timing only, to the landlord to adjourn this hearing.

For these reasons, I dismissed the tenant's request for an adjournment and the hearing proceeded.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and for compensation, pursuant to Section 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began on September 1, 2013 as a month to month tenancy for a monthly rent of $600.00 due on the 1st of each month with a security deposit of $300.00 paid. The tenancy ended when the tenant vacated the rental unit on May 15, 2014.

The tenant submitted that she provided her forwarding address to the landlord when she provided the landlord with her notice to end the tenancy which was approximately 5 days prior to vacating the rental unit.

The tenant submitted that the rental unit had mould and it was unsafe for her and her family. She submitted that she provided notice that they would be moving out and that the landlord went away so she could not return the keys directly to the landlord. She stated that she provided the landlord with her forwarding address when she gave the landlord her notice. The tenant seeks double the amount of the security deposit.

The tenant submitted that her boyfriend missed a lot of work as a result of sickness related to the mould. The tenant submitted that she had repeatedly reported the mould problem to the landlords. The tenant seeks compensation in the amount of $400.00.

The tenant provided no evidence to confirm the presence of mould or if there was mould whether it was toxic or had any impact on human health. The tenant also provided no evidence from a medical practitioner that her boyfriend suffered from any medical condition related to mould or from his employer that he missed any work, as a result. The tenant also provided no evidence that she had reported any problems to the landlord.

The landlord submitted the tenant provided no notice of her intention to end the tenancy but rather simply moved out and left her keys with a neighbouring tenant. The landlord provided copies of text messages into evidence showing that the tenant provided the landlord with her forwarding address on May 15, 2014; that the landlord asked about how the keys would be returned; and that the landlord asked to complete a move out inspection on May 15, 2014.

The landlord submitted additional text messages that confirm the tenant received the landlord's text to complete the move out inspection but not until after the tenant did not attend to complete the inspection and advising the landlord that she could get the keys from a neighbour. The text messages go on to suggest meeting to conduct the inspection on May 20, 2014; the landlord acknowledges that the tenant did not respond and so on May 21, 2014 she texted the tenant indicating that she had posted a Notice of Final Opportunity to Schedule an Inspection on her current rental unit door.

The tenant submitted that she had asked the landlord to complete the inspection the day she moved out but that the landlord was not available. She also states that she does not recall receiving the landlord's Notice of Final Opportunity to Schedule an Inspection.

The tenant's advocate testified that the landlords had not completed a move in condition inspection at the start of the tenancy because the tenant had keep all the records and there was not a copy of a condition inspection report in her paperwork.

The landlord testified that a condition inspection was completed at the start of the tenancy and the tenant was provided with a copy of the condition inspection report at that time.

Analysis

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants.

While the tenant's advocate testified that a move in condition inspection was not completed at the start of the tenancy, I find all of the evidence and testimony submitted by the tenant and her advocate to unreliable.

For example, the tenant submitted that she had provided her forwarding address to the landlord when she had provided the landlord with her notice of her intention to vacate the rental unit, which she states was 5 days before the end of the tenancy. From the landlord's documentary evidence the landlord received the tenant's forwarding address on the day the tenant vacated the rental unit.

As such, the tenant either provided erroneous testimony regarding the date she provided the landlord with her forwarding address and notice to end the tenancy or no notice to end the tenancy was provided 5 days before the end of the tenancy.

Further, the tenant submitted that she offered to have the landlord inspect the unit on the day they moved out, however, again the landlord's documentary evidence shows that the landlord offered the opportunity and the tenant did not respond.

As such, I accept the landlord's testimony that a move in condition inspection report was completed and provided to the tenant at the start of the tenancy.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Section 36 stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has provided the tenant with at least 2 opportunities to complete a move out condition inspection and the tenant has not participated on either occasion.

From the documentary evidence provided I find that the landlord did offer the tenant three opportunities to complete a move out condition inspection including by providing the tenant with a final notice. I also accept that the landlord served the tenant with this notice as well as informing her that they had posted the notice on her door.

For these reasons, I find the tenant has extinguished her right to return of the security deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the tenant's claim for compensation for losses resulting from mould in the rental unit, I find the tenant has provided absolutely no evidence to establish that the rental unit had any mould; that there was any toxicity in any possible mould in the rental unit; that any one suffered health problems as a result of toxic mould; or that any one suffered a financial loss as a result.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: November 05, 2014

Residential Tenancy Branch