Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This dispute resolution process originated upon the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for a return of her security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

A hearing on the tenant's application was held on March 25, 2015, and was attended by the tenant only. The tenant's application was successful, as the original Arbitrator in a Decision of March 26, 2015, in the absence of the landlord, found that based upon the undisputed evidence of the tenant, the tenant was entitled to monetary compensation in the amount of $2615.53. The original Arbitrator also determined that the landlord had been served the tenant's application for dispute resolution as required under section 89 of the Act.

On April 9, 2015, the landlord filed an application for review consideration of the Decision of March 26, 2015, alleging that she had evidence the original Decision was based upon fraud. The landlord submitted that she was never served with the tenant's application for dispute resolution and notice of a hearing and that instead, she received a letter, dated January 6, 2015, by registered mail, outlining a claim against the landlord. In her application for review consideration, the landlord submitted that this letter was used in order to obtain a registered mail receipt.

The landlord's application for review consideration resulted in a favourable decision as the reviewing Arbitrator, in a Review Consideration Decision dated April 16, 2015, granted the landlord a review hearing. The reviewing Arbitrator ordered the landlord to serve the tenant a copy of the Review Consideration Decision and Notice of Hearing documents within 3 days of receiving the Decision.

At this review hearing, the tenant and the landlord attended, and had questions as to the purpose of this hearing. I explained to the participants that the reviewing Arbitrator's intent was to grant a new hearing on the tenant's application, as allowed under section 82(2)(c) of the Act, rather than this review hearing. The Act does not mention that one outcome of an application for review consideration is a review hearing, and the only

possible outcomes would be by written submissions by reconvening the original hearing, or by holding a new hearing.

With the understanding that this review would be conducted by holding a new hearing on the tenant's original application for dispute resolution, the tenant and the landlord were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

The parties both had the other's documentary evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Should the Decision of March 26, 2015, be confirmed, varied, or set aside?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 1, 2004. The tenant submitted that she vacated the rental unit on December 27 or 28, 2012, and the landlord submitted that she did not know until January 9, 2013, the tenant vacated the rental unit. The evidence also showed that the tenant paid a security deposit of $325.00.

The tenant submitted that the tenancy actually ended on December 31, 2012, as she had paid rent for the entire month of December 2012, and the effective end of tenancy date listed on the landlord's notice to end the tenancy was December 31, 2012. The tenant filed her application for dispute resolution on December 30, 2014. I accept that the tenant filed her application within the 2 year limitation period as allowed under section 60 of the Act, as she had use and occupancy of the rental unit until December 31, 2012, at which time the tenancy ended.

As to the tenant's monetary claim, she has listed the following items:

Security deposit, doubled	$650.00
"Studio"	$800.00
Lost food	$400.00
17 days without a refrigerator	$170.00
Homeless, 9 weeks	$1462.50

The tenant's relevant documentary evidence included typewritten details of her claim, a letter from another person related to sending the tenant's written forwarding address to the landlord, and banking information.

The landlord's relevant evidence included typewritten details of the landlord's response to the tenant's claim, an invoice for refrigerator removal, after the tenancy ended, and photos of the rental unit.

In support of and in response to the tenant's application, the parties provided the following evidence-

Security deposit, doubled-

The tenant submitted that she paid a security deposit of $325.00, the cheque for which was cashed on February 17, 2004. The tenant submitted that on or about January 9, 2013, another person mailed the landlord her written forwarding address, and the security deposit has not been returned. The tenant supplied a copy of the letter from this person, dated December 4, 2014, stating that the forwarding address had been provided to the landlord.

In response, the landlord submitted that she did not receive a forwarding address from the tenant until January 2015, in a January 6, 2015, letter of her claim, and that this was the first contact she has had with the tenant since December 2012.

"Studio"-

In explanation, the tenant submitted that the rental unit was a separate studio and that she could not use the bedroom due to mould. As a result, from March, when the tenancy began, until October 2004, she slept on the couch.

In response, the landlord submitted that all these claims of the tenant date back to 2004. The landlord submitted further that she was never informed that there was mould and that when any issues were addressed when notified of them by the tenant. The landlord submitted further that the rental unit is a beach house and mould is not uncommon.

Lost food; 17 days without a refrigerator-

The tenant submitted that the refrigerator supplied in the rental unit was an older model and that it broke down during the tenancy. The refrigerator was repaired, but the repairman informed the tenant it would not last long and the landlord was aware of this situation, according to the tenant.

As to the loss of food, the tenant submitted that the refrigerator had contained expensive seafood, as the area was near water.

The tenant submitted further that it took 17 days before the landlord replaced the refrigerator and that she should be compensated for the value of the lost food and the inconvenience for 17 days.

In response, the landlord submitted that there were 2 refrigerators in the rental unit, one belonging to the landlord and the other to the tenant. The landlord submitted that when she was informed that the refrigerator had broken down, it was repaired. The landlord submitted further that she was not made aware of any other refrigerator issues or that food was being lost.

Homeless, 9 weeks-

The tenant submitted that when she arrived home on June 6, 2007, she discovered the rental unit had flooded, which meant that she spent long hours in mopping the water. The water was also required to be turned off and the landlord's insurance company hired a restoration company to make the repairs. The tenant submitted further that for 9 weeks, she had no place to live while the rental unit was being restored, as the flooring was being replaced and all her personal property had to be packed. The tenant submitted that she stayed with friends and neighbours during the 9 weeks, as she had to stay in the area to allow the repairmen to enter the rental unit. The tenant submitted further that she lost employment income due to being displaced, and that all these facts entitle her to be compensated.

In response, the landlord submitted that there were no water leaks or water damage in the rental unit in 2007; however, the hot water tank leaked and it was replaced in 2006, as indicated on the invoice she supplied. The landlord submitted further that the tenant never requested or required to vacate the rental unit.

Analysis

Security deposit, doubled-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing.

In the case before me, I find the tenant submitted insufficient evidence to show that she provided her written forwarding address to the landlord until a letter of January 6, 2015, outlining the tenant's claim, over 2 years since the tenancy ended. I was not persuaded by the tenant's evidence of the letter from another person, as there was no copy of the written forwarding address or proof that it was mailed to the landlord. The letter writer did not attend the hearing in order to be questioned about the service and contents of the alleged letter. I also took particular note that the letter by that other party was dated December 4, 2014, for said to be for mailing a letter nearly two full years earlier.

Under section 39 of the Act, if the tenant fails to provide their written forwarding address within a year after the tenancy ended, the landlord may keep the security deposit.

I therefore dismiss the tenant's claim for a return of her security deposit, doubled, and allow the landlord to keep the tenant's security deposit, as I find that the tenant submitted insufficient evidence to show that the landlord was provided a written forwarding address within 1 year of the end of the tenancy.

"Studio"; Lost food; 17 days without a refrigerator; Homeless, 9 weeks-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.
In this case

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action.

In the case before me, I find the tenant submitted insufficient evidence to show that she made any requests of the landlord for repairs or with allegedly being homeless and losing food. Without this proof and the parties' disputed oral evidence, I cannot find that the landlord was negligent or violated the Act regarding her requirements of addressing any concerns or repairs.

Additionally, I find the tenant submitted insufficient evidence to show that she took reasonable steps to minimize her claimed loss.

Residential Tenancy Branch Policy Guideline #5 specifically states as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately.

In this case, the evidence of the tenant shows that the tenant only addressed her claim over 5-7 years from the date of alleged occurrences, with her application for dispute resolution.

For these reasons, I dismiss the tenant's request for monetary compensation for these claims, as she has not submitted sufficient evidence of a loss, or that the landlord has violated her obligations under the Act, or that the tenant took steps to minimize her loss.

Due to the above, I dismiss the tenant's application, including her request to recover the filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply, as I have found she has supplied insufficient evidence to support her claim.

As I have dismissed the tenant's application, I order that the Decision and monetary order of March 26, 2015, be set aside, and they are no longer of any force or effect.

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: June 22, 2015

Residential Tenancy Branch