Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenants by posting on May 15, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other party by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated May 15, 2015 and setting the end of tenancy for June 30, 2015?
b. Whether the tenants are entitled to recover the cost of the filing fee?
c. Whether the landlord is entitled to an Order for Possession?
d. Whether the landlord is entitled to A Monetary Order and if so how much?

e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord and JRJ and MH entered into a written tenancy agreement that provided that the tenancy would start on August 15, 2015 and end on August 15, 2015. The agreement is confusing as the parties have checked off the box indicating the tenancy would continue on a month to month basis and also that the tenancy ends and the tenants must move out of the rental unit. The rent is $1650 per month payable in advance on the first day of each month. The tenants paid a security deposit of $825 on July 23, 2014 and a pet damage deposit of $250 on August 15, 2014.

The tenant moved out of the rental unit and the tenancy came to an end on June 30, 2015.

Tenant's Application:

The tenants no longer have an interest in continuing with the tenancy and they have vacated the rental unit. As a result I ordered that the tenants' application to cancel the one month Notice to End Tenancy and to recover the cost of the filing fee be dismissed without leave to re-apply.

The tenant testified she faxed a document requesting that her Application for Dispute Resolution be amended to include claims for breach of privacy, right to quiet enjoyment, breach of entry and for the landlord to pay the utilities that she owes the tenant. Rule 2.11 of the Rules of Procedure provide as follows:

> **2.11 Amending an application before the dispute resolution hearing**
>
> The applicant may amend the application without consent if the dispute resolution hearing has not yet commenced.

> If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application on each respondent as soon as possible.
>
> If the application has been served, a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.
>
> An amended application must be clearly identified, and be provided separately from all other documents. All evidence to support an amended application must be served on the other party and submitted to the Residential Tenancy Branch at the same time as the amended application is served and submitted. (See Rule 3 – *Serving the Application and Submitting and Exchanging Evidence*).

The Application was never formally amended. Further, the tenant testified she served the amendment with other documents. It was not given to the other side at least 14 days before the scheduled date of the hearing. As a result I determined the tenants' application was not properly amended. The tenants retain the right to file a new Application for Dispute Resolution seeking the relief identified in her proposed amendment.

Landlord's Application for an Order for Possession::

The tenants have vacated the rental unit and the landlord has regained possession. As a result I order that the landlord's application for an Order for Possession be dismissed..

Landlord's Application for a Monetary Order and an order to keep the security deposit/pet damage deposit and the cost of the filing fee:

Rule 2.5, 3.12 and 3.14 provide as follows:

> **2.5 Documents that must be submitted with an application for dispute resolution**
> To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch:
>
> - a detailed calculation of any monetary claim being made;
> - a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
> - copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49.

3.12 Willful or recurring failure
An Arbitrator may refuse to accept evidence if the Arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or Order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

3.14 Evidence not submitted at the time of Application for Dispute Resolution
Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

The landlord did not serve a detailed calculation of any monetary claim being made (the Monetary Order Worksheet) when she served the Application for Dispute Resolution by registered mail on June 15, 2015. The landlord delayed in providing the tenants with a copy of the Monetary Order worksheet and provided it with her evidence on June 29, 2015 by leaving it in the mailbox. By that time the CJH had vacated the rental unit. Further, the landlord has not completed much of the work which makes up her monetary claim.

In the circumstances I determined that it was appropriate to dismiss the landlord's claim for a monetary order and an order to keep the security deposit/pet damage deposit with leave to re-apply. The parties were advised of the provisions of section 38 of the Residential Tenancy Act requiring the landlord to either return the security deposit/pet damage deposit within 15 days of the end of the tenancy or the date the landlord receives the tenants' forwarding address in writing and encouraged to talk to an information officer immediately. That section provides as follows:

Return of security deposit and pet damage deposit

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.

(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]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

The landlord has not been successful in her monetary claim in this hearing and accordingly the claim to recover the cost of the filing fee is dismissed without leave to re-apply.

Conclusion:

The tenant's application to cancel the one month Notice to End Tenancy and the landlord's application for an Order for Possession were dismissed as the landlord has regained possession and neither party has any interest in continuing with the tenancy.. I determined the tenant failed to properly amend her application to include a claim for monetary compensation and that claim was not considered. The tenants have a right to file a new application seeking that relief. Similarly, the landlord's application for a monetary order and to keep the security deposit was dismissed with liberty to re-apply.

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: July 08, 2015

Residential Tenancy Branch