Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit and pet damage deposit / in addition to recovery of the filing fee.

A summary of events leading up to the scheduling of this hearing on June 24, 2015 from previously scheduled dates, is set out in the Interim Decision dated May 27, 2015. A copy of the Interim Decision and the Notice of Adjourned Hearing were mailed to the parties by the Residential Tenancy Branch on June 05, 2015. The present hearing was scheduled to commence at 1:00 p.m. on June 24, 2015. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located in the basement portion of a 2 storey house. The landlord, who is not the owner, resides in the upstairs portion of the house. It is understood that the owners of the house reside elsewhere.

Relevant documentary evidence before me is not limited to, but comprises mainly text messages exchanged between the parties, in addition to a photocopy of a photograph taken of the entrance door to the unit, which is shown to be damaged in the area surrounding the deadbolt lock. All of the documentary evidence has been submitted by the tenant. There is no documentary evidence before me from the landlord, and neither has the landlord filed an application for dispute resolution.

There is no written tenancy agreement for the tenancy which began on December 15, 2014. Monthly rent was $900.00, and near the start of tenancy the landlord collected a total payment of $1,550.00 from the tenant, as follows:

> $450.00: *rent for the period from December 15 to 31, 2014*
> $900.00: *security deposit*
> $200.00: *pet damage deposit*

When tenancy began, apparently no unit keys were available to be given to the tenant. The tenant stayed overnight in the unit for 1 night on December 15, 2014, stayed overnight elsewhere on December 16, 2014, and vacated the unit on December 17, 2014. The tenant claims that her decision to vacate arose from a feeling that she was not safe in the unit because of the damaged door, the seemingly compromised deadbolt lock, and the absence of any keys to the unit, in addition to her determination that the landlord was not likely to make the necessary repairs "anytime soon." Neither a move-in, nor a move-out condition inspection report were completed, and there is no evidence that the landlord issued a notice of final opportunity to schedule a condition inspection at either the beginning of the tenancy or when the tenant vacated.

During the hearing the landlord claimed that the unit door was fixed very shortly after the tenant vacated the unit, and that a new renter took possession of the unit effective from January 15, 2015.

When the tenant vacated the unit, the landlord declined the tenant's request to repay all of the monies previously collected from her. Thereafter, the tenant sought legal counsel ("counsel"). By letter dated December 23, 2014, counsel informed the landlord that his firm now represented the tenant in her dispute with him, and counsel requested repayment of "funds in the amount of $1,550.00 that are due and owing" to the tenant. Thereafter, the landlord repaid $450.00 of the $900.00 security deposit collected at the start of tenancy. In this regard, section 19 of the Act addresses **Limits on amounts of deposits** and provides as follows:

> 19(1) A landlord must not require or accept either a security deposit or pet damage deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement.

Further to repayment of ½ the security deposit, as above, no additional monies have been repaid to the tenant. The landlord disputes the tenant's claim that she is entitled to any additional reimbursement.

Analysis

Based on the testimony of the parties and the documentary evidence before me, the various aspects of the tenant's application and my findings are set out below.

$450.00: *repayment of rent paid for the period December 15 to 31, 2014*

While there is no written tenancy agreement, I find that the parties entered into a month-to-month tenancy beginning December 15, 2014. I find that this tenancy was entered into by way of verbal agreement between the parties. Further, I find that this tenancy was entered into by way of payment of rent for the period from December 15 to 31, 2014, in addition to payment of a security deposit and a pet damage deposit.

Whether or not the tenant was aware of the full extent of the damaged door when she initially viewed the unit and / or when the parties entered into a tenancy agreement, pursuant to section 32 of the Act which addresses **Landlord and tenant obligations to repair and maintain**, I find that the landlord was obligated to maintain the property "in a state of decoration and repair that complies with the health, safety and housing standards required by law" and which "makes it suitable for occupation by a tenant."

I find that by way of multiple text messages exchanged between the parties, principally during the 3 day period from December 15 to 17, 2014, the tenant communicated her concern about the damaged door and the absence of unit keys. The landlord acknowledged the tenant's concerns and informed the tenant that he had been "talking to the landlords and discussing what to do…"

Section 33 of the Act addresses **Emergency repairs**, in part:

> 33(1) In this section, **"emergency repairs"** means repairs that are
>
> (c) made for the purpose of repairing
>
> (iv) damaged or defective locks that give access to a rental unit,
>
> (3) A tenant may have emergency repairs made only when all of the following conditions are met:
>
> (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I find no evidence that the landlord informed the tenant of a person to contact for emergency repairs. Rather, the landlord clearly communicated that he was addressing the matter.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, in part:

> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Having determined that the landlord could not be relied upon to have the repairs completed within a "reasonable time," the tenant vacated the unit 3 days after tenancy began. I find that other avenues available to her included making arrangements herself to have the repairs made, or seeking an order instructing the landlord to make the repairs by filing an application for dispute resolution. While I am unable to conclusively determine when the repairs were completed, I find the tenant failed to take reasonable measures to mitigate her loss prior to vacating the unit after only 3 days of tenancy on December 17, 2014.

Section 45 of the Act addresses **Tenant's notice**, in part:

> 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Clearly, the tenant's text message notice of her intent to vacate the unit a day or two before she vacated the unit, does not comply with the above statutory provisions.

Following from all of the above, I find that the tenant has failed to meet the burden of proving entitlement to reimbursement of rent paid. This aspect of the application is therefore dismissed.

$900.00: *(2 x $450.00) the double return of the security deposit*
$400.00: *(2 x $200.00) the double return of the pet damage deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit.** In part, this section 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 / pet damage deposit(s), or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit(s), and must pay the tenant double the security / pet damage deposit(s).

I find that by way of counsel's letter to the landlord dated December 23, 2014, the tenant effectively provided the landlord with a forwarding address for purposes of the repayment of her security / pet damage deposit(s). With the exception of the subsequent repayment of the $450.00 overpayment of the original security deposit, the landlord has neither repaid the $450.00 balance of the security deposit, nor any portion of the $200.00 pet damage deposit. Additionally, neither has the landlord filed an application for dispute resolution in which he seeks to retain a portion or all of either deposit. In the result, I find that the doubling provisions of the Act have been triggered, and the tenant has therefore established entitlement to the full amount(s) claimed.

$390.60: *moving expenses*

The tenant paid rent for the period from December 15 to 31, 2014 and vacated the unit on December 17, 2014. I find that the damaged door, the apparently compromised deadbolt lock, and the absence of keys to the unit, are insufficient for me to conclude that the tenancy agreement was frustrated. Specifically, the tenant had other options available to her under the Act in order to attempt to remedy her concerns about safety and access to the unit. Following from all of the foregoing, I find that the tenant has failed to meet the burden of proving entitlement to the moving costs claimed. This aspect of the application is therefore dismissed.

$50.00: *filing fee*

As the tenant has achieved a measure of success with the main aspect(s) of her application, I find that she has also established entitlement to recovery of the filing fee.

Total entitlement: $1,350.00 ($900.00 + $400.00 + $50.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$1,350.00.** Should it be necessary, this order may be served on the landlord, 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: July 09, 2015

Residential Tenancy Branch