Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF; MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits") in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of their deposits, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and the tenant, JP ("tenant") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to speak on behalf of his wife, "tenant AP," the other tenant named in both applications, as an agent at this hearing. This hearing lasted approximately 82 minutes, in order to allow both parties to have a full opportunity to present their submissions at this hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package ("Landlord's Application") on February 3, 2015, by way of registered mail. The tenant confirmed receipt of the landlord's Application, with the exception of 13 photographs of text messages. I received a copy of the landlord's 13 photographs of text messages with her Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Landlord's Application, with the exception of the landlord's 13 photographs of text messages. I note that Rule 3.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit photographs of printable documents such as text messages. The Rule also requires photographs to be numbered with a table of contents.

Accordingly, I am unable to consider the landlord's 16 photographs of text messages, 3 of which the tenant claimed to have received, and 13 which the tenant did not receive, at this hearing today or in my decision, as per the above Rule 3.10.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Tenants' Application"), including photographs. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Tenants' Application.

Preliminary Issue – Landlord's Adjournment Request

Near the end of the hearing, the landlord requested an adjournment of the hearing in order to serve the tenant and the RTB with three photographs of mold in the rental unit. The landlord stated that she could not locate the registered mail receipt during this hearing, to confirm service of these photographs on the tenant. I advised the landlord that I had not received a copy of these three photographs with the landlord's Application. The tenant opposed the adjournment request, noting that he had waited a long time since the date of both parties' filings in February 2015, to have both applications heard at this hearing and that he did not wish the process to be delayed any longer.

During the hearing, I advised the parties that the hearing would not be adjourned. This decision was made after taking into consideration the criteria established in Rule 6.4 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*
>
> > *(a) the oral or written submissions of the parties;*
> > *(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
> > *(c) 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;*
> > *(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> > *(e) the possible prejudice to each party…*

In reaching my decision, I note that the tenant did not consent to an adjournment of the hearing. I also note that the landlord had sufficient notice of this hearing since filing her application on February 2, 2014, in order to serve her evidence and to ensure that the RTB and tenant had received her evidence. Rule 3.10 of the RTB *Rules of Procedure* requires that landlord must determine that the tenants and the RTB are able to gain access to the digital evidence, which includes photographs, at least 7 days prior to this hearing. I find that both parties have waited a

lengthy time since filing their applications to have them heard together at this hearing and that a further adjournment would likely not contribute to the resolution of this matter. Although monetary applications are not generally considered urgent matters, the tenants have had to wait until this hearing date in order to have their own matter heard and would be prejudiced by a further adjournment of their matter. During the hearing, I advised both parties about my reasons for denying the landlord's adjournment request. Accordingly, this hearing proceeded on both parties' applications.

Preliminary Issue – Amendment of Tenants' Application

The tenant confirmed that the tenants only applied for a return of double the amount of their deposits, not a monetary order for money owed or compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement. However, the tenants indicated a $1,500.00 amount in their application, which is in excess of their deposits, as well as a description of their claim for a loss of quiet enjoyment, in the "details of the dispute" section of their application. The landlord confirmed during the hearing that she was aware of the tenants claim for a loss of quiet enjoyment and that she had received the tenants' full application and written evidence. Therefore, as the tenants are seeking a loss of quiet enjoyment, I amend their application, pursuant to my authority under section 64(3)(c) of the *Act*, to add the relief for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, as per section 67 of the *Act*.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award for the return of double the amount their deposits or for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties confirmed that this tenancy began on February 1, 2013 and ended on January 31, 2015. Tenant AP is listed on the tenancy agreement as "tenant AO"; however, the tenant confirmed that tenant AP's current legal name is correct after her marriage to the tenant. Monthly rent in the amount of $950.00 was payable on the first day of each month. A security deposit of $475.00 and a pet damage deposit of $250.00 were paid by the tenants and the landlord continues to retain both deposits. The landlord provided a copy of the written tenancy

agreement with her application. Both parties agreed that a move-in condition inspection and report were completed on February 1, 2013. Both parties agreed that a move-out condition inspection occurred but a report was not completed, as the tenants refused to sign the report. Both parties agreed that the tenants provided a written forwarding address to the landlord on January 31, 2015.

The landlord seeks to retain the tenants' deposits totaling $725.00 for damages that she says the tenants caused at the rental unit. The landlord initially applied for a monetary award of $1,745.98 but testified that she wished to reduce her claim to $725.00 because her costs were only $882.00 and she wanted to be reasonable in her request. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's monetary claim to reduce it to $725.00, as I find no prejudice to the tenants in doing so, as it is a reduction, rather than an increase, in the monetary amount sought.

The landlord testified that the tenants broke the glass panes on two French doors in the rental unit. The landlord stated that a contractor who attended at the rental unit to address a mold problem advised her that the glass was likely punched out by someone in anger. The landlord indicated that the glass appears to have been completely and neatly removed from the entire section of the door, rather than having jagged edges from being accidentally broken. The tenant testified that the glass initially had jagged edges but that he removed them for the safety of his two pets in the rental unit. The landlord noted that the tenants did not advise her about this broken glass but that she discovered it when she was inspected the rental unit for mold. The landlord indicated that she sent a text message to the tenants to ask about the broken glass, to which the tenant responded by claiming that the glass must have shattered when the doors were closed. The tenant confirmed this statement at the hearing, stating that the doors may have been closed more forcefully causing it to break. The tenant stated that this was ordinary wear and tear, as the doors were old. The landlord claimed that the tenant had already gotten a quote from one company indicating that it would be cheaper to replace both doors rather than replacing the glass only. The tenant agreed with this statement. The landlord stated that this amounted to an admission by the tenants that they negligently caused this damage. The tenants dispute this. The tenant stated that he was initially willing to replace the doors at his own cost, indicating that he was trying to be helpful to the landlord, as he had never encountered any damage in a rental unit during his many years of prior tenancy, and that he was unsure of how to handle the situation. However, the tenant explained that he changed his mind in paying for the doors because he encountered problems with renovations and a loss of quiet enjoyment in the last week of his tenancy.

The landlord confirmed that she replaced both doors and paid a company $882.00 for this work, including labour and tax. The landlord provided a copy of the invoice. The landlord also provided a letter from the same company indicating that it was more economical to replace both doors rather than the glass only. The landlord confirmed that the replacement was done in mid-February, around February 16, 2015. The landlord stated that this work was done after new tenants moved into the rental unit in the second week of February 2015. The landlord provided

a copy of a higher estimate from another company of $747.99 for each door, but indicated that she was ultimately able to pay a lower amount with a different company.

The tenants seek a return of their deposits totaling $725.00 because they believe they are entitled to an award of double their deposit pursuant to section 38 of the *Act* and for a loss of quiet enjoyment. The tenants initially applied for a monetary award of $1,500.00 but the tenant testified that he wished to reduce the tenants' claim to $725.00 because it was a reasonable amount equivalent to the landlord's claim. Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' monetary claim to $725.00, as I find no prejudice to the landlord in doing so, as it is a reduction, rather than an increase, in the monetary amount sought.

The tenants seek compensation for a loss of quiet enjoyment because they say that the landlord completed disruptive renovations in the rental unit during the last week of their tenancy. The tenant stated that the landlord could have completed these renovations after the tenants moved out and that it was not an emergency. The landlord stated that she discovered a big mold problem caused by the tenants in the bathroom, during one of her inspections near the end of the tenancy, and that she wanted to fix it immediately in order to minimize the health issues to the tenants as well as the new tenants who would be moving in to the rental unit. The tenant stated that there was no health risk to the tenants and that the mold issue occurred because bathrooms fans were changed. The landlord explained that the tenants did not use the fan in the bathroom causing mold and that the rotted drywall had to be removed from the bathroom.

The tenant stated that the renovations were only supposed to last for 1 day but instead took 10 days. The landlord stated that the renovations only took 5 days. The tenant stated that the contractors were in the rental unit all day until evening time and that they left a mess all over the unit. The tenant maintained that the tenants could not use their shower and had to go to their parents' houses to shower. The tenant explained that he had to pay to take his dog to daycare because he could not leave the dog alone in the rental unit with the contractors. The tenant stated that the renovations also caused his wife to be upset, straining the relationship between the two tenants. The landlord confirmed that this short renovation disruption was temporary and does not qualify as a breach of the tenants' right to quiet enjoyment. The landlord indicated that she paid the tenants $155.00 cash in person to account for the disruption, calculated by dividing the monthly rent of $950.00 by 31 days in the month of January 2015, equalling $31.00 per day for 5 days. The tenant stated that he only received $50.00 from the landlord and it only covered one day of dog daycare.

Both parties also seek to recover the $50.00 filing fee paid for their respective applications.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show the efforts to minimize the loss or damage. In the Landlord's Application, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damage to the two French doors, which entitles the landlord to compensation. In the Tenants' Application, the onus is on the tenants to prove, on a balance of probabilities, that the landlord caused a loss of quiet enjoyment to the tenants, which entitles the tenants to compensation.

In summary, each party must prove the following elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant party followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord is entitled to $725.00 for replacing the two French doors in the rental unit. Both parties agreed that the glass was broken and both parties provided photographs of the broken glass in the doors, verifying that the damage existed. I found the landlord to be a truthful and credible witness and I prefer the more plausible explanation provided by the landlord as to how the glass broke. I find it more likely than not, that the tenants were negligent and caused the glass to break. I do not find it likely that the glass broke by simply closing the doors or thorough ordinary wear and tear. I find that the conduct of the parties supports the above explanation. The landlord discovered the damage and confronted the tenant after the tenant had already begun looking into replacing the doors. The tenant was initially intending to pay for the damage, but later retracted his offer because of renovation issues in the unit. The landlord provided an invoice for $882.00, confirming the work done and testified that she paid this amount. The landlord also provided a letter from the company indicating that both doors should be replaced, rather than the glass. The landlord then quickly replaced the doors once she was able to obtain quotes and information from various companies. I find that the landlord has met all four parts of the test above and she is entitled to compensation for this loss. Although the landlord provided a receipt for $882.00, the landlord reduced her claim to $725.00 at this hearing and accordingly, I award her this amount.

I dismiss the tenants' claim for $725.00 for a loss of quiet enjoyment in the rental unit. The tenants did not provide sufficient documentary evidence to show that they suffered this loss. Although the tenants provided some photographs of the renovations being done, I do not find

these to be compelling in proving a loss of quiet enjoyment. The tenants simply stated that they were inconvenienced by the loss of their shower, the additional people in their unit, the messy nature of the workers and the strain on their relationship. Further, I accept the landlord's evidence that she paid the tenants $155.00 for the loss of use of their rental unit during these renovations. I do not accept the tenants' evidence that the amount paid by the landlord was only $50.00. The tenants did not provide any receipts for their dog daycare expenses, to substantiate their claim. The tenants did not provide a specific breakdown as to why they are entitled to the amount of $725.00, indicating only that they wished for the return of their deposits. Therefore, the tenants' claim fails parts one and three of the test above, as the tenants did not provide proof that the loss exists or of the actual amount required to compensate for the claimed loss.

The tenants are not entitled to the return of double the amount of their deposits under section 38 of the *Act*. The tenants are only entitled to double the amount if the landlord fails to return the deposits in full OR does not file an application within 15 days of the end of the tenancy and the provision of the tenant's written forwarding address. Although the landlord did not return the deposits, the landlord filed her application to retain the deposits on February 2, 2015. This is within 15 days of the end of this tenancy and the written forwarding address provision on January 31, 2015.

Accordingly, the tenants' application for a return of double their deposit, as well as their claim for a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply.

The landlord continues to hold the tenants' deposits totalling $725.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of $475.00 and pet damage deposit of $250.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in her application, she is entitled to recover the $50.00 filing fee from the tenants.
As the tenants were unsuccessful in their application, they are not entitled to recover the $50.00 filing fee from the landlord.

Conclusion

I order the landlord to retain the tenants' entire security deposit of $475.00 and pet damage deposit of $250.00, totalling $725.00, in partial satisfaction of this claim.

I issue a monetary order in the landlord's favour in the amount of $50.00 against the tenants to account for the filing fee for the landlord's application. The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this Order as soon as possible.

Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' entire application is dismissed without leave to reapply.

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: August 13, 2015

Residential Tenancy Branch