Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit and a cross-application by the tenant for a monetary order and an order for the return of double her security deposit. Both parties participated in the conference call hearing.

At some point, the landlord submitted a new monetary order worksheet to the Residential Tenancy Branch (the "Branch") through which she purported to amend her monetary claim from $575.00 to $2,300.00. The tenant stated that she did not receive this new worksheet and testified that she had received limited evidence from the landlord and that the photographs she had received had been photocopied in black and white and she was unable to clearly see the images.

The landlord testified that she served the tenant with the new worksheet after she received the tenant's claim, which was filed on May 15. The landlord initially stated that she served the worksheet on the tenant sometime before May 15, but when I pointed out that if the worksheet was served after the tenant filed her claim, it could not have been served until after May 15, the landlord then testified that she served the tenant with the worksheet approximately 1 month prior to the hearing.

The landlord acknowledged that she did not serve the tenant with all of the evidence the landlord provided to the Branch and explained that this was because the tenant should already have copies of emails between the two and because some of the evidence had been submitted in support of a previous dispute resolution hearing which was held on December 23, 2014. She argued that the cost of mailing documents to the tenant was prohibitive and she wanted to keep those costs as low as possible.

I have determined that I will not consider any of the evidence which the landlord provided to the Branch and not to the tenant. Although the landlord believes the tenant already has some of the evidence in her possession, the tenant has a right to know

exactly which evidence the landlord intends to rely upon and also has the right to see those documents in advance of the hearing in order to prepare her response.

I have not considered the landlord's photographs as the landlord did not provide colour copies to the tenant as she did to the Branch and I am not persuaded that the images on those photographs are as clear as the images in the photographs provided to the Branch. Again, the tenant has the right to view exactly the same evidence as the arbitrator and it would be unfair to the tenant to consider evidence which she has not seen.

I am not persuaded that the landlord served the new monetary order worksheet on the tenant as she has acknowledged that she was not diligent in providing copies of every document to the tenant. I therefore do not consider the application to have been amended and I consider the only claim before me from the landlord to be the claim to retain the security deposit.

I note that the landlord also submitted to the Branch evidence and photographs which she received from the tenant. The landlord claimed that the tenant had sent her those documents and photographs to harass her and stated that she did not have time to look at them. I have considered all of the tenant's evidence, including these documents and photographs, as the tenant has complied with the Rules of Procedure in serving these documents on the landlord.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?
Should the security deposit be doubled?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2013, that rent was set at $1,150.00 per month and that at the outset of the tenancy, the tenant paid security and pet deposits of $550.00 each. They further agreed that the tenancy ended on March 31, 2015, although the tenant vacated the unit earlier than that date, and that the landlord returned the pet deposit to the tenant. The parties further agreed that a condition inspection of the unit was not done either at the beginning or the end of the tenancy. The rental unit is part of a home which also houses a separate self-contained unit which is occupied by another tenant.

The landlord seeks to retain the security deposit and her original application states that the monies are intended to compensate the landlord for work on the garden, cleaning windows and the sliding glass door, removing garbage, replacing a curtain rod, repairing a screen door, cleaning the bathtub and replacing the carpet.

The parties agreed that the tenant agreed to mow the front lawn although that space was shared between the two rental units on the residential property and that she was responsible for maintaining the back yard, over which she had exclusive access, although the tenant claimed that the occupant of the other suite allowed her dog to use the back yard on occasion. The landlord claimed that the garden and flowers were dead at the end of the tenancy. The tenant claimed that she was only responsible to mow the lawn and denied that the garden had died.

The landlord alleged that the tenant failed to adequately clean the windows and bathtub and left garbage bins for the other occupant to dispose of. The tenant testified that she thoroughly cleaned the unit and stated that the garbage bins were on the property when her tenancy began and that she did not feel it was her responsibility to remove that garbage.

The landlord alleged that the tenant stained the carpet and in her testimony, claimed that the tenants' pets caused such a severe odour in the unit, the carpet had to be replaced. The tenant provided evidence showing that she had the carpet professionally cleaned and deodorized and testified that the stain on the carpet was there when the tenancy began.

The tenant seeks compensation from the landlord claiming that the landlord harassed her so severely, she was forced to move. The tenant seeks her moving costs, the rent paid for her first month of tenancy at her new home as she had to pay rent both in this rental unit and at her new home for the month of March, and compensation for "pain, suffering and inconvenience."

The tenant testified that the landlord attempted to enter the rental unit more than once a month, which the tenant believed to be contrary to the provisions of the *Residential Tenancy Act* (the "Act"), that the landlord constantly complained about the tenant's overuse of water and hydro as the landlord paid for all of the water and 25% of the hydro costs under the terms of the tenancy agreement, that the landlord peered into her cupboards and refrigerator on one occasion when she was inspecting the home and that the landlord made unreasonable demands. The tenant claimed that the landlord's actions caused her to experience extreme stress and provided a note from her doctor in which the doctor stated, "This lady was under considerable reactive stress with her previous landlady from December 2014".

The landlord acknowledged that on one occasion she looked into the tenant's cupboards and refrigerator, but testified that she only did so because she wanted to ensure that they were clean. She claimed that she asked for the tenant's permission before looking, but at the hearing the tenant denied that the landlord requested permission. The landlord denied having harassed the tenant and stated that she checked with the Branch before communicating with the tenant because she wanted to ensure that she was complying with the law. The landlord testified that she did not complain about the tenant's use of hydro, but was working with the tenant to figure out how to reduce hydro costs in response to the tenant's complaints. She stated that she brought up the cost of water just to let the tenant know that the rate had changed.

The tenant also seeks the return of double her security deposit as the landlord failed to perform condition inspection reports.

Both parties seek to recover the $50.00 filing fees paid to bring their respective applications.

Analysis

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

In order to prove that she has the right to retain the security deposit, the landlord must meet this test. Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear. Because I cannot consider most of the landlord's evidence as explained in the introduction to this decision, there is very little documentary and no photographic evidence showing that the tenant failed to leave the rental unit in reasonably clean and undamaged condition. The tenant denied having caused damage and claimed that she cleaned the rental unit and without evidence to corroborate the landlord's claim that the unit was damaged and unclean, I am not persuaded on the balance of probabilities that the tenant breached her obligation under the Act. For that reason, I find that the landlord does not have the right to retain the security deposit and I order her to return the deposit to the tenant forthwith. I award the tenant $550.00.

Turning to the tenant's claim, the tenant claimed that the only reason she moved was because the landlord harassed her, but her evidence shows that in October 2014 she told the landlord that she intended to look for alternate accommodation as she found the cost of hydro to be excessively high. I find it more likely than not that the tenant moved because of the cost of hydro and I therefore dismiss her claim for the cost of moving and the cost of her first month's rent at her new accommodation.

The Act does not provide for compensation for pain and suffering, but it does require landlords to provide quiet enjoyment to tenants and I consider the tenant's claim for pain, suffering and inconvenience to be equivalent to a claim for loss of quiet enjoyment.

I am not satisfied on the evidence that the tenant has proven that the landlord breached her obligations under the Act or, if she did so, that the breach was of sufficient gravity to warrant compensation. The landlord made a number of requests and demands of the tenant that were not supported by the Act, such as demanding that the tenancy agreement be re-written and demanding that the tenant perform certain actions within 5 days, but on each occasion, the tenant apprised the landlord of her rights under the Act and the landlord did not pursue the matter. The landlord may have requested an unreasonable number of entries into the rental unit, but there is nothing under the Act which prevents the landlord from requesting permission to enter. I agree that the landlord should not have looked into the tenant's cupboards and refrigerator and I find that the landlord did not request and was not given permission to do so. However, I am unable to find that this was an act that was so significant or had such an impact on the tenant that compensation is warranted.

It appears that both parties complained about the costs of hydro and I find that there is nothing in the Act which prevents the landlord from offering cost saving tips to the tenant, no matter how unwelcome those tips may be. Both parties requested information from the Branch and perhaps because they did not provide full information to the information officers with whom they interacted, they received incomplete information and each on occasion communicated incorrect information to the other party. The conveyance of incorrect legal information and misrepresentation of one's rights and obligations under the Act is not a breach of the Act or tenancy agreement.

I find that the tenant has not met the first step of the test outlined above as she has not proven that the landlord breached the Act or tenancy agreement. I therefore dismiss the tenant's claim for loss of quiet enjoyment.

The tenant has claimed double the security deposit, arguing that the landlord did not perform a condition inspection of the unit at the beginning or end of the tenancy and

therefore could not retain the deposit. Sections 24 and 36 of the Act provide that because the condition inspections were not completed, the landlord's right to claim against the security deposit has been extinguished. Section 38(6) of the Act provides that the landlord must pay the tenant double the security deposit if the landlord does not file a claim against the deposit within 15 days of the end of the tenancy. The section does not say that the tenant is entitled to double the deposit if the landlord has extinguished the right to claim against the deposit. Because the Act does not impose doubling when extinguishment has taken place, I find that the tenant is not entitled to double the deposit and I dismiss that claim.

The claims of both parties are dismissed. Although the tenant has been awarded the security deposit, she did not receive that award because she filed an application. Rather, the Residential Tenancy Policy Guidelines require me to award the tenant the security deposit when the landlord has filed a claim against it and been unsuccessful. For this reason, I find that neither party is entitled to recover the filing fees paid to bring their applications.

Conclusion

I grant the tenant a monetary order under section 67 for $550.00. This order may be filed in the Small Claims Division of the Provincial 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: September 02, 2015

Residential Tenancy Branch