Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenants' 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 pet damage deposit / and recovery of the filing fee.

A hearing was previously held on September 18, 2015. However, the Arbitrator who conducted the hearing was unable to issue a decision "due to personal, unforeseen circumstances." In the result, by letter dated November 02, 2015 the Residential Tenancy Branch (the "Branch") informed the parties that a new hearing would need to be conducted. Enclosed with the Branch's letter was a "notice of a dispute resolution hearing," in which the parties were informed of the time and date of the new hearing, in addition to the telephone number and access code for participating. In the Branch's letter the parties were also informed that, "The written record as it existed at the time of the original hearing, plus any sworn testimony presented at the new hearing, will form the basis for the decision."

The new hearing was scheduled to commence by way of telephone conference call at 9:30 a.m. on November 12, 2015. The tenants were in attendance at that time and gave affirmed testimony. The landlord did not appear.

The tenants testified that neither had the landlord attended the hearing that was held on September 18, 2015. In that regard, the tenants testified that they had served the landlord with their application for dispute resolution and the notice of hearing (the "hearing package") by registered mail. Evidence provided by the tenants includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on April 27, 2015.

Following from all of the above, I find that the landlord was duly served in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy was from December 15, 2013 to December 15, 2014. The agreement provides that at the end of the fixed term the "tenancy may continue on a month-to-month basis or another fixed length of time." Monthly rent of $1,700.00 was due and payable in advance on the first day of each month; despite this provision, a process evolved whereby 2 installment payments were made toward rent at 2 different times each month. A security deposit of $850.00 and a pet damage deposit of $850.00 were collected. While a move-in condition inspection was completed with the participation of both parties, there is no move-in condition inspection report in evidence, and the tenants testified that they were not given a copy of any written notations that may have been made by the landlord concerning the condition of the unit at the start of tenancy.

With the passage of time, as a result of events which included, but were not limited to, emails from the landlord and delivery of court documents to the unit, and unit inspections "ordered by the mortgagee," the tenants became concerned that tenancy may end prematurely as a result of foreclosure proceedings that were underway against the landlord. The potential and unanticipated disruption of such an outcome led to an email dated September 15, 2014, in which the tenants gave notice to end tenancy effective October 15, 2014. Subsequently, by letter dated September 30, 2014, legal counsel acting on behalf of the tenants instructed the landlord that she may retain $850.00 of the total $1,700.00 collected for security / pet damage deposit(s), as payment of rent for the period from October 01 to 15, 2014. In his letter, legal counsel also instructed the landlord of the tenants' expectation that the $850.00 balance of the total deposits collected would be repaid to them "once they have vacated the [unit]." A move-out condition inspection was completed on October 15, 2014 with the participation of both parties, however, there is no move-out condition inspection report in evidence, and the tenants testified that they were not given a copy of any written notations that may have been made by the landlord concerning the condition of the unit at the end of tenancy. The tenants testified that the landlord made accusations against them concerning damage to the unit / property which are entirely without merit.

By letter dated November 03, 2014, the tenants informed the landlord of their forwarding address for the purposes of repayment of the $850.00 balance of deposits collected at the start of tenancy. To date, no portion of that amount has been repaid.

The tenants filed their application for dispute resolution on April 10, 2015. In their application the tenants seek miscellaneous compensation arising from this tenancy. There is no application before me from the landlord, and neither is there any documentary evidence before me from the landlord with respect to the tenants' application.

Analysis

At the outset, the attention of the parties is drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, section 37 of the Act addresses **Leaving the rental unit at the end of tenancy**, in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and….

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, the various aspects of the application and my findings are set out below.

$1,700.00: *(2 x $850.00) 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 date the tenancy ends, and the date the landlord receives the tenants' forwarding address in writing, the landlord must either repay the security / pet damage deposit, 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, and must pay the tenants double the amount of the security / pet damage deposit.

In this case, I find that the amount of $850.00 which the tenants instructed the landlord that she may withhold for rent, is the security deposit. I find that the balance of $850.00 ($1,700.00 - $850.00) is the pet damage deposit. I further find that the landlord neither repaid the pet damage deposit, nor filed an application for dispute resolution, within 15 days after being informed by the tenants of their forwarding address in writing on November 03, 2014. Accordingly, I find that the tenants have established entitlement to the full amount claimed.

$5,000.00: *breach of right to quiet enjoyment*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference

I find that in good faith the tenants entered into what they were encouraged to believe would be a long term tenancy. I also find that the actions of the landlord which included, but were not limited to, requesting that the tenants make payments toward rent more frequently than what was agreed to in the tenancy agreement, cautioning the tenants about the potentially disturbing presence in the neighbourhood of her ex-husband, allegedly improper issuance of a 10 day notice to end tenancy for unpaid rent or utilities, informing the tenants of a pending foreclosure, as well as delivery of mail to the unit and inspections of the unit in relation to foreclosure proceedings, in combination all served to breach the tenants' right to quiet enjoyment.

Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment," in part:

- **Claim for damages**

> An Arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Following from all of the above, I find that the tenants have established entitlement to compensation in the total amount of **$850.00**, or ½ of 1 month's rent under the tenancy agreement.

$3,400.00: *(2 x $1,700.00) 2 months' rent arising from alleged breach of contract*

Despite the tenants' concerns that tenancy may be ended before the date shown in the tenancy agreement as the end of the fixed term for reasons beyond their control, I find that it was ultimately the tenants who ended tenancy, not the landlord. Further, I find that this aspect of the application has more properly been addressed above, under breach of right to quiet enjoyment. This particular aspect of the application must therefore be dismissed.

$1,240.00: *legal fees arising from alleged breach of contract*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

$280.00: *cost of window coverings*
$12.90: *cost of gate latch*
$380.00: *fitting of appliances by plumber and electrician*
$80.00: *notification to others of change of address*
$35.00: *printing of new business cards*

There are no receipts in evidence. Neither is there documentary evidence of communication between the parties prior to or during the term of tenancy in relation to the landlord's undertaking to incur any of the above expenses. Further, whether tenancy ended when it did after only 10 months, or at some later date, I find that certain of the above costs would have been incurred by the tenants. However, bearing in mind that the tenants were given assurances that this was going to be a long term tenancy, and in the absence of any early indication by the landlord to the tenants that her ownership of the property may be in jeopardy, and that this in turn may affect their tenancy, I find that the tenants have established entitlement in the limited nominal amount of **$300.00**.

$100.00: *filing fee*

As the tenants have achieved a measure of success with the principal aspect(s) of their application, I find that they have also established entitlement to recovery of the filing fee.

Total entitlement: $2,950.00 ($1,700.00 + $850.00 + $300.00 + $100.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$2,950.00**. 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: November 16, 2015

Residential Tenancy Branch