Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, OLC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- other relief, identified as a return of the furniture deposit, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The male tenant ("tenant") and the "female tenant" (collectively "tenants"), and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 100 minutes in order to allow both parties to fully present their submissions. The landlord used the majority of the hearing time to provide his own verbal testimony and to refer to written evidence. The landlord notified me at the outset of the hearing that he was calling from a telephone line outside of the country and that there was a time delay. I took this into account during the hearing and was required to repeat some questions and comments to the landlord. The hearing was also lengthened by the fact that the landlord asked a number of questions seeking legal advice, despite the fact that I notified him that I could not provide legal advice. The landlord interrupted the proceedings by speaking over me and the two tenants repeatedly, and laughing during certain portions of the tenants' testimony. I advised the landlord that this was a serious legal proceeding and that his behaviour was inappropriate. Despite numerous warnings, the landlord continued with the above behaviour throughout the hearing.

At the outset of the hearing, the tenants confirmed that they had originally filed a first application for dispute resolution in August 2015 ("first application"), but were unable to pick up their hearing package and serve the landlord with it within three days. The tenants stated that they had applied for the same relief in their first application as this current application, with the exception of the filing fee for the first application. The tenants confirmed that they had essentially abandoned their first application. Therefore, this decision and monetary order relates to this current application only, as the landlord was not served with the first application.

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

I had not received the tenants' written evidence package prior to this hearing. The landlord testified that he had received the tenants' entire written evidence package prior to this hearing. Therefore, I permitted the tenants to serve only the identical written evidence package provided to the landlord, to me at the Residential Tenancy Branch ("RTB") after this hearing, by way of facsimile. The landlord voiced no objection to this. I received the tenants' written evidence after the hearing and reviewed and considered it in my decision.

Preliminary Issue – Written Evidence submitted by the Landlord after the Hearing

On March 14, 2016, the landlord provided a two-page letter, as well as a one-page banking document, by way of facsimile, after this hearing and before this decision was written. I did not ask the landlord to provide any evidence to me after the hearing.

Although I would not normally consider written evidence submitted by a party after a hearing when I have not requested them to send in evidence, I find that by addressing the landlord's concerns, this matter can be dealt with efficiently and expediently to avoid further delay and proceedings by the landlord. I find minimal, if any, prejudice to the tenants in considering this evidence, for the reasons noted below, and as the majority of the landlord's concerns focus on procedural matters.

New Hearing Request by Landlord

Prior to even receiving my decision, the landlord requested a new hearing because there was a phone time delay, as he was calling from out of the country. As noted above, I took this into account and the hearing was lengthened because I had to repeat

myself and provide the landlord with extra time to respond. As noted above, the majority of the 100-minute hearing time was used by the landlord to provide verbal submissions as well as to reference documentary evidence.

The landlord did not request an adjournment of the hearing to a later date, at any time during the hearing. The landlord had ample opportunity to submit written evidence prior to this hearing, as the tenants' Application was filed on December 17, 2015, and the hearing occurred on March 3, 2016. Therefore, I deny the landlord's request for a new hearing or a further reconvened hearing.

Tenants' Written Evidence Submission after Hearing

The landlord said that while he received the tenants' written evidence and reviewed it prior to this hearing, the proceedings were "confusing" because the tenants' written evidence was not in front of me. The landlord said that because the tenants' written evidence was not received by me, 14 days prior to this hearing, the tenants had not followed the RTB *Rules of Procedure*. At no time during the hearing, did the landlord state that he was confused or disoriented or that he required an adjournment of the hearing.

I only provided the tenants with permission to provide evidence after the hearing because I had not received their evidence package, despite it being sent to the RTB, and the landlord testified that he had received and reviewed this evidence from the tenants. As advised to both parties during the hearing, and receiving no objections from the landlord, I received the tenants' written evidence and considered it in my decision. The landlord even stated during the hearing that he had submitted an email to the tenants which he wanted me to consider, and that the tenants had provided this evidence to me, while the landlord had not.

I did not allow the tenants to submit additional evidence that had not been served upon the landlord prior to this hearing. The landlord has mischaracterized my directions to the tenants. The landlord noted that he wished to submit additional evidence "that has come to light during the hearing." I did not allow the tenants to submit any evidence that came to light during the hearing. Therefore, the landlord was not permitted to do so either. However, for the reasons noted below, I have considered the landlord's additional evidence.

Landlord's Money Transfer Evidence

While I would not ordinarily consider the landlord's written evidence because it was submitted after the hearing without my permission, I find that it is an important piece of evidence that must be considered. The landlord had access to this document prior to the hearing but chose not to submit it as evidence. I find no prejudice to the tenants in considering this document, for the reasons noted below, and as both parties made verbal submissions regarding the possible return of a portion of the security deposit during the hearing.

The landlord submitted a copy of an email money transfer, which he said was the return of a portion of the security deposit to the tenant for $126.15 on November 14, 2014 and deposited on December 13, 2014. I find that this evidence is not an official bank document, as it is printed from a website. It is not a document signed or stamped by a banking representative from the landlord's bank. Although having a bank logo on it, it does not show the landlord's name or account number to demonstrate that the landlord, not someone else, actually paid the tenant. It also does not show who it was deposited by, only the date and time, which was one month later. Therefore, I do not give any weight to this document. During the hearing, the tenants testified that they did not receive $126.15 from the landlord from the deposit and I accept their evidence as I found them to be forthright, credible witnesses. Therefore, I find that the landlord did not return any amount to the tenants from the security deposit.

Preliminary Issue - Jurisdiction regarding Tenancy

The landlord claimed that this rental unit was a "seasonal rental." When questioned further, the landlord stated that the tenants occupied the unit for the purposes of vacation or travel accommodation as per section 4(e) of the *Act* and that I did not have jurisdiction to hear this matter. The landlord said that because the written tenancy agreement indicates different amounts for rent according to different seasons, it was a "seasonal rental."

The tenants testified that they occupied the rental unit for residential purposes. They said that they lived and worked in the area and they were not occupying the unit for vacation or travel accommodation. They said that they understood the varying rental amounts in the tenancy agreement to be based on winter being a busier season with a higher demand for units and spring/summer being slower seasons that are not as busy in the area.

I find that I have jurisdiction to hear this matter as it does not fall under section 4(e) of the *Act*. I find that the tenants occupied this unit for residential purposes, as they were living and working in the area, not for vacation or travel purposes. In the written tenancy

agreement, the landlord decided to decrease the rent during the less busy season, when units are not in high demand in the area. That was the choice of the landlord. The tenants understood it to be in line with the demand for units in the area. I do not find the title of "seasonal lease agreement" or the varying rent in the tenancy agreement to constitute this as vacation or travel accommodation because it was not occupied for those purposes.

Preliminary Issue - Jurisdiction regarding Furniture Deposit

During the hearing, the landlord did not make any submissions regarding jurisdiction the furniture deposit paid by the tenants to the landlord, as being outside my jurisdiction. After the hearing, the landlord, as part of his written evidence, claimed that the furniture deposit was outside of RTB jurisdiction as it was for rental of his "personal furniture" on a "separate contract specifically for the furniture and other items that were mentioned in that contract."

I find that I have jurisdiction to determine the outcome of the tenant's furniture deposit of $2,400.00. The landlord provided a copy of the furniture deposit agreement and noted on there that it was a "damage deposit" for any "damage and or missing items" and it was for "the time period as applicable to the lease attached." I find that the landlord intended this furniture contract to be an addendum to the tenancy agreement. He included an inventory of furniture items. This was not a purchase of the landlord's furniture. It was a rental of the landlord's furniture only during the period of the tenancy. Renting a furnished place is common for many tenancies and I find that was the case for this tenancy.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary award for the return of their security deposit?

Are the tenants entitled to a return of their furniture deposit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover their filing fee for this Application from the landlord?

Background and Evidence

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

The tenant confirmed that he moved into the unit in November 2012 and no move-in condition inspection was done at that time. The female tenant said that she moved into the unit on October 14, 2012, and no move-in condition inspection was done at that time. Both parties agreed that, as per the written tenancy agreement, this tenancy began on October 15, 2013 and ended on October 31, 2014. As per the written tenancy agreement between the parties, which was provided for this hearing, rent was varied and seven tenants were named on the agreement and living in the unit. The landlord said that the tenant was his main contact for all seven tenants living in the rental unit. Monthly rent in the amount of $4,900.00 was initially due from October 15, 2013 until March 15, 2014 and payable on the 15th day of each month. Rent was then $4,100.00 from April 15, 2014 until September 15, 2015. Finally, rent was prorated to $2,250.00 from October 15 to 31, 2014.

Both parties agreed that a security deposit of $2,400.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties agreed that a furniture deposit of $2,400.00 was paid by the tenant. The tenants said that the landlord continues to retain both deposits, while the landlord claimed that he returned $126.15 from the security deposit to the tenants and he retained the remainder of the security deposit and the entire furniture deposit.

Both parties agreed that a move-in condition inspection report was completed for the tenancy beginning in October 2013, but a move-out condition inspection report was not completed for this tenancy. The landlord testified that he did not provide the tenants with a RTB form requesting a final opportunity to complete a move-out condition inspection. The landlord agreed that the tenants provided a written forwarding address to him by way of an email, dated November 3, 2014.
The tenants testified that the landlord did not have written permission from them to keep any amount from their security deposit. The tenants said that they initially agreed to discuss an amount to provide to the landlord for cleaning of the unit but this never happened because no move-out condition inspection was completed. The landlord said that he had written permission from the tenants to fix various damages including for drywall, cleaning and a missing mattress, but no specific amounts were given and the landlord was unable to provide any amounts verbally during this hearing. The landlord

has not filed an application for dispute resolution to retain any amounts from the security or furniture deposits.

The tenants also seek to recover the $50.00 filing fee paid for their second Application only, not the first application.

Analysis

Furniture Deposit

Section 15 of the *Act* states that a landlord may require tenants to pay a security deposit as a condition or a term of entering into a tenancy agreement. Section 20 of the *Act* states that a landlord must not require or accept more than one security deposit in respect of a tenancy agreement. The *Act* does not allow the landlord to collect deposits outside of security and pet damage deposits. However, the landlord has collected a furniture deposit and indicated that it is for possible damage to furniture. The landlord himself refers to it as a damage deposit in his signed contract with the tenants and said that it was applicable to the rental period in the tenancy agreement.

I find that the landlord has illegally collected a furniture deposit from the tenants. Accordingly, I find that the tenants are entitled to the full return of this furniture deposit of $2,400.00 from the landlord, as this amount should not have been collected by the landlord.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

As the landlord failed to provide the tenants with two opportunities to complete a move-out condition inspection report and no report was completed, as required by section 36 of the *Act*, his right to claim against the tenants' security deposit for damage is

extinguished. Although the landlord said that he gave the tenants two opportunities, he agreed that he did not provide the tenants with the required RTB form for a final opportunity to complete a move-out condition inspection, as required by section 17(2)(b) of the *Regulation*. I find that the landlord did not have written permission from the tenants to retain any amount from their security deposit and that he could not have obtained written permission for any damages, as he claimed at this hearing, as his right to do so was already extinguished under section 36 of the *Act*.

This tenancy ended on October 31, 2014. The landlord acknowledged receiving a forwarding address in writing by way of an email, dated November 3, 2014. Although email delivery is not permitted under section 88 of the *Act*, I find that the landlord was sufficiently served, for the purposes of section 71(2)(c) of the *Act*, with the tenants' forwarding address on November 3, 2014. The landlord acknowledged receipt of the email and confirmed that he sent his written evidence for this hearing to the tenants at this forwarding address. As the landlord did not return the full deposit or file for dispute resolution within 15 days of receipt of the written forwarding address, I find that the tenants are entitled to double the value of the return of their security deposit, totaling $4,800.00 from the landlord. I find that no interest on the security deposit is payable during the tenancy period.

Although the tenants did not file for a return of double their security deposit, they did not specifically waive this right and they are entitled to double the value as per Residential Tenancy Policy Guideline 17. As noted above, I found that the landlord did not return $126.15 from the security deposit to the tenants, so this amount is not deducted from the above calculation.

Filing Fee

As the tenants were successful in this Application, I find that they are entitled to recover the $50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $7,250.00 against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: March 31, 2016

Residential Tenancy Branch