Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's 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;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 83 minutes in order to allow both parties, particularly the tenant who spoke for the most of the time, to fully present their submissions. The hearing was lengthened by the fact that the tenant repeatedly interrupted while the landlord and I were speaking, the tenant would not listen to my request for one person to speak at a time, the tenant continued to repeat the same information and talk about irrelevant matters despite my warnings, and the tenant continued with the above inappropriate behaviour despite multiple warnings from me.

The landlord confirmed receipt of the tenant's 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 tenant's Application.

The landlord said that he did not serve the tenant with a one page letter, dated July 30, 2015, that the tenant wrote to the landlord. The tenant confirmed that she submitted this letter with her own Application evidence. The tenant said that she wanted the letter to be considered at this hearing and in my decision, as it formed part of her Application. Therefore, I considered the July 30, 2015 letter at the hearing and in my decision.

Issues to be Decided

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

Is the tenant entitled to a return of her security deposit?

Is the tenant entitled to recover the 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 the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2014 and ended on August 8, 2015, when the keys were returned to the landlord. Monthly rent in the amount of $875.00 was payable on the first day of each month. A security deposit of $437.50 was paid by the tenant and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy.

Both parties agreed that a written tenancy agreement was signed, although the tenant said that she does not know if the landlord signed it, but she did. The tenant said that it was a month-to-month tenancy only, not a fixed term, as she made this change when she signed the agreement first. The landlord said that the tenancy was for a fixed term of one year after which it was to become month-to-month, as he made this change after the tenant signed it. Neither party provided a copy of the tenancy agreement for this hearing.

The tenant said that she provided a written forwarding address to the landlord by way of a letter, dated September 6, 2015, which was mailed to the landlord. The landlord said that he received it on October 10, 2015. The landlord confirmed that he did not file an application for dispute resolution to retain any amount from the security deposit. Both parties agreed that the tenant gave the landlord written permission to keep the security deposit of $437.50, by way of a letter, dated July 30, 2015, to cover half a month's rent for August 2015. The tenant said that she was medically unwell at this time and she did not intend to permit the landlord to keep her deposit for rent. The landlord claimed that the tenant gave less than one month's notice to vacate the unit, as she provided the

above letter, dated July 30, 2015, to the landlord regarding her intention to leave the unit, which she did on August 8, 2015.

The tenant seeks a monetary order of $1,341.20 total, which includes the $50.00 filing fee for this Application. The tenant seeks a return of her security deposit of $437.50, registered mail fees of $22.01, a half month's rent of $437.50 for August 2015, moving expenses of $340.00, a mold analysis report of $40.00, and a mold test kit of $14.19.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four 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 landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

As advised to the tenant during the hearing, she is not entitled to recover registered mail fees for her Application. The only hearing-related fees that are recoverable under section 72 of the *Act* are for filing fees. Therefore, the tenant's Application for registered mail fees of $22.01 is dismissed without leave to reapply.

I find that the tenant failed to prove that the landlord materially breached the terms of the tenancy agreement, such that the tenant was entitled to end the tenancy without giving notice to vacate.

Section 45(3) of the Act states the following, in part:

> *(3) If a landlord has failed to comply with a material term of the tenancy agreement…and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

I find that the tenant did not provide the landlord with sufficient notice to rectify any potential mold problems in the rental unit. I find that the tenant did not provide sufficient evidence to show that she made reasonable efforts to contact the landlord between September 2014, when she said the problem started, and July 2015 to resolve the mold

issues. The tenant agreed that in January 2015, the landlord offered an inspector to come into the unit to inspect the "hump" in the flooring that the tenant complained of, but the tenant refused and said that she did not need the inspection. The tenant says that she called the landlord on July 7, 2015 to fix the mold issue after she tripped and fell on the flooring and the landlord had someone to inspect the unit on July 20, 2015. The tenant then gave a written letter to the landlord on July 22, 2015 that she had to move from the unit because of the mold, and another letter on July 30, 2015, that she was actually moving.

I find that the tenant failed to provide sufficient evidence to show that the rental unit had mold. The photographic evidence provided by the tenant shows flooring in the bedroom, with a red marker used by the tenant to show the area where she believes the mold growth was uncovered, which was underneath the flooring. The tenant did not show any of the flooring when it was opened to show mold or black areas, despite the fact that she was present during this procedure and she collected her own samples to show mold during this time. The landlord said that he did not see the mold and that no areas in the bedroom were inspected for mold. He said that the only area inspected, that the tenant complained of, was in the hallway and transitional part leading to the bedroom. I find that the landlord made reasonable efforts by hiring someone to inspect the flooring but the tenant prevented work from being done by interfering with this inspector during his assessment, as noted by the landlord.

I find that the photographs taken of the "samples" of "mold" as claimed by the tenant, do not demonstrate that there was mold in the rental unit. The tenant collected these samples herself on July 20, 2015, without telling the landlord or the inspector that she was collecting them while the inspector was opening the flooring. The landlord said that the tenant collected them from a garbage bag and he does not know where they came from. The tenant then sent them to a lab in the same country, which then outsourced the sample to another country, and was analyzed in a report that was made on November 3, 2015, months later. The tenant is not an expert or professional in collecting mold samples to submit for testing. Therefore, I dismiss the tenant's claims for $40.00 for the mold analysis report and $14.19 for the mold test kit, without leave to reapply.

I find that the tenant gave notice on July 30, 2015 in her letter, to leave "on or before August 31, 2015." Although the tenant vacated on August 8, 2015, she was required to give notice to the landlord under section 45 of the *Act*. Whether this tenancy was for a fixed term ending on August 31, 2015, as the landlord claimed, or it was a month-to-month tenancy, as the tenant claimed, the tenant was responsible to pay for August

2015 rent. The tenant could not have ended the tenancy prior to the end of the fixed term on August 31, 2015, if it was a fixed term. If it was a month-to-month tenancy, she was required to give one month's notice, which she gave in the form of a letter on July 30, 2015, saying that she was moving out on or before August 31, 2015, which is one month. The landlord confirmed that he was unable to re-rent the unit until September 1, 2015, despite the tenant's claims otherwise. The tenant did not provide any proof that other occupants moved into the unit on August 15, 2015, as the landlord said that he put the hydro utilities in his name when the tenant cut it off for August 15, 2015, and the tenant's claims of seeing moving trucks does not prove that other occupants moved in on the above date. Therefore, I find that the tenant is not entitled to any compensation for August 2015 rent, totaling $875.00, from the landlord. I also find that the tenant is not entitled to moving expenses of $340.00 because she chose to move on her own accord without providing the landlord a reasonable amount of time to inspect and rectify any potential mold problems.

Security Deposit

Section 38 of the *Act* requires a landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, a 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 tenant's 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 tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on August 8 2015. The tenant provided a written forwarding address to the landlord, which was received by him on October 10, 2015. The landlord did not return the deposit or file an application to retain it. The landlord's right to claim against the deposit for damages was extinguished by his failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. However, as per Residential Tenancy Policy Guideline 17, the landlord can still obtain the tenant's written permission to keep the deposit to deduct for other monies owing other than damages, including rent.

I find that the tenant gave the landlord written permission to keep the security deposit of $437.50 to pay for half of August 2015 rent. Despite the tenant's claims that it was not her intention, she supplied a written letter from July 30, 2015, confirming this fact. I find

that the landlord is entitled to August 2015 rent from the tenant, as noted above. Therefore, I find that the tenant is not entitled to the return of her security deposit of $437.50 as the landlord had written permission to retain it to pay for August 2015 rent.

As the tenant was wholly unsuccessful in her Application, I find that she is not entitled to recover the $50.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I order the landlord to retain the tenant's entire security deposit of $437.50.

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: April 29, 2016

Residential Tenancy Branch