Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL STOBER CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and confirmed the landlord served their Application by registered mail on the tenant. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A monetary order pursuant to Sections 7 and 67 for damages;
b) To retain the security deposit in satisfaction of the amount owing; and
c) An order to recover the filing fee pursuant to Section 72.

Preliminary Issue:

The tenant requested an adjournment to have the building manager present as she had dealt with him during the tenancy. The landlord said he was in hospital.
The Residential Tenancy Branch Rules of Procedure (Rules) provide in 5.1 that a hearing may be rescheduled if both parties consent not less than 3 days before the hearing. I find no evidence that the tenant attempted to obtain consent of the landlord or even advised that they needed to have the building manager present at the hearing.
I find in the event an adjournment is requested during a hearing, Rule 7.9 sets out criteria for consideration. The following factors are considered:

- The oral or written submission of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard;
- The possible prejudice to each party.

I determined that an adjournment would not be granted. The tenant had not obtained previous consent of the landlord and neglected to advise the landlord that she required the attendance of the building manager at the hearing. I find the building manager's attendance would not be more likely to lead to resolution since his position is set out in emails between the parties. I find the tenant had fair opportunity to be heard and to

supply her documentary evidence in advance of the hearing. The landlord had a hearing in March 2016 and the tenant had a Review of that hearing. I find delay of this hearing would unfairly prejudice the landlord's effort to obtain a timely resolution of their damage claim and they would expend more staff time in another hearing so I denied the request for an adjournment.

Issue(s) to be Decided:
Is the landlord entitled to a monetary order for damages? Is the landlord entitled to recover the filing fee?

Background and Evidence:
Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy began in September 2014, that monthly rent was $750 and a security deposit of $365 was paid. It is undisputed that the landlord obtained an Order of Possession effective March 31, 2016 in a prior hearing and the tenant vacated on April 4, 2016.

The landlord said the tenant refused to return the keys unless the landlord paid $100 to her. The tenant said the keys were returned April 7, 2016 through the mail slot in the manager's door as instructed. She said she had lost her original keys and was required to pay $100 to obtain another set. She said the building manager told her the $100 would be returned when she returned the keys. She said that when she was doing a walk through inspection with the property manager on April 4, 2016, he disappeared when she was requesting some changes and her deposit back. She said the manager attending for the landlord today refused to come and pick up the keys on April 5 or 6, 2016.

The landlord said any tenant who puts a deposit on keys is given a receipt and the deposit is usually only $15. She said multiple keys are not given. She said the receipts have carbon copies in a book and they went through the carbon copies and there was no receipt for money paid by this tenant for keys. When the tenant over held the unit until April 4, 2016, refused the return of the keys, and refused to sign the condition inspection report, the landlord was concerned for the safety and security of others in the building so they ordered the locks on the building changed by a professional locksmith. They posted notices to inform all the tenants of the change. Only then the landlord said, the tenant said she would return the keys but the process had commenced with the locksmith so the locks were changed at a cost of $897.50. However, on their Application, the landlord limited their claim to $365 which is retention of the security deposit.

The tenant states this is unfair as she was ready to return the keys and did on April 7, 2016. She was unable to find a receipt for the $100 deposit as it was in a purse in her mother's car which was stolen.

In evidence are emails, one from the building manager which said the tenant attended the move out inspection on April 4, 2016 but would not return keys unless she received $100. He said she told him she had no receipts and he told her she would get her $100 if she had a receipt for it. He noted all keys would have to be redone because of this problem. In another email, the tenant provided her forwarding address on April 8, 2016 and said she had borrowed the $100 key deposit from another person in the building with the promise he would get it back. She notes she saw the notices of the landlord about changing the locks but she observed the locks have not yet been changed. She said the landlord had agreed to return her security deposit.

On April 5, 2016 there is a string of emails between the building manager and the tenant where the tenant asks the building manager to meet for keys and to sign the inspection report and the building manager tells her to talk to the office for information and did not respond when she was insistent. On April 6, 2016, the tenant wrote that the landlord was ripping up her unit and changing her locks which was not a responsible way to behave. She states she told the building manager on the telephone the previous day she would eat the $100 and told him to just come and get the keys. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

I find that the landlord changed the building and unit locks at a cost of $897.50 as invoiced. However, on the Application, the landlord claims to recover only $365 of this cost. The amount of the security deposit in trust is $365 and the landlord applies to retain it. The landlord attempted to increase the monetary claim in the hearing but I denied this request as the tenant did not have notice of it and an opportunity to respond to the increased amount which I find is contrary to the Rules of Natural Justice.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

Section 37 (2) (b) of the Act provides when a tenant vacates a rental unit, the tenant must give the landlord all the keys that allow access to and within the residential property. I find the tenant violated this provision by refusing to return the keys. Although she contended she did not refuse, her emails on that date and subsequently confirm she initially refused and then offered to return them after she found the landlord had ordered the locks to be changed and had agreed to the cost. I find the landlord acted promptly to change the locks because of their honest belief that the tenant might damage the property. Considering that she was evicted for damage to the property, I find their belief was not unreasonable. I find they incurred costs of $897.50 as invoiced to replace locks. However, the landlord applied only to retain the $365 security deposit in compensation. I find the landlord entitled to retain the $365 security deposit.

In respect to the tenant's contention that she was entitled to receive $100 refund for her payment for keys that were replaced during the tenancy when she lost them, I find Residential Tenancy Regulation 7(1) (a) provides that such a charge for replacing keys is non refundable. Whether or not she did pay a fee, I find according to the Regulation, she is not entitled to a refund of the fee.

Conclusion:

I find the landlord is entitled to retain the security deposit as requested to compensate them for changes to locks. I find the landlord is also entitled to recover filing fees paid for this application. A monetary order is issued for $100 to recover their filing fee.

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 14, 2016

Residential Tenancy Branch