Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC; MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The two landlords, male and female, and the tenant 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 87 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed that he served two emails to the landlords and the Residential Tenancy Branch ("RTB") prior to this hearing. The landlords confirmed service of these two emails. I informed the tenant that I had not received these emails from him. Both parties confirmed that the first email was contained in the landlords' first written evidence package, which I had received. I asked the tenant to provide me with a copy of the second email after the hearing, by way of facsimile. I received the tenant's second email at the RTB on November 29, 2016. During the hearing, I advised both

parties that I would consider the tenant's two emails at the hearing and in my decision, as the landlords received and reviewed them prior to the hearing and had no objection to them.

The tenant confirmed that he applied for a monetary order for the cost of emergency repairs in error. Accordingly, this portion of his application is dismissed without leave to reapply.

Preliminary Issue – Landlords' Adjournment Request

The landlords confirmed that they served their second written evidence package on the tenant on November 3, 2016, by way of registered mail to an address that they found on an envelope of written evidence sent to them by the tenant. The majority of the landlords' documents contained text messages between the parties, as well as a form K for strata responsibilities, and charges to the landlords for strata fines.

The tenant testified that he did not receive this package from the landlords and that he did not provide the address on the envelope to the landlords as an address for service. He said that it was only a return address from where the mail was sent by him to the landlords. The landlords confirmed that the tenant did not provide the address as his service address but they assumed it was a more current address for the tenant. The tenant confirmed that he had previously provided a forwarding address to the landlords in writing and he had received their application and first written evidence package at that first address. Therefore, I informed both parties that I could not consider the landlords' second written evidence package at this hearing because it was not properly served as per section 88 of the *Act*, to the tenant at a forwarding address provided by him. Further, the tenant did not receive the evidence or review it prior to this hearing.

After informing the parties of my decision not to consider the above evidence, the landlords made an adjournment request in order to serve the tenant with this evidence at his proper address. The tenant opposed the adjournment request saying that he had waited long enough for the hearing date and he wanted to resolve both applications, including his own.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

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

The landlords filed their application first on May 30, 2016, and the tenant had filed his application later on June 13, 2016. I find that the landlords had almost six months to prepare for this hearing and serve their evidence to the tenant. I also find that the landlords were well aware of the tenant's correct service address since they had sent their original application and first written evidence package there and both were received by the tenant. The landlords assumed that the tenant lived at another mailing address because it was a return address on the tenant's evidence even though the tenant did not provide it to them for service. I find that the landlords did not even attempt to confirm this address with the tenant or to ask if he had received the second written evidence package there, prior to this hearing. I further note that both parties waited almost six months for this hearing date and this matter requires resolution. I find that the tenant also filed an application and served his documents to the landlords appropriately, so he has the right to achieve resolution without delay because of the landlords' errors. I also find that the majority of the landlords' evidence, which was text messages, was irrelevant to this matter, in any event.

Issues to be Decided

Is either party 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 recover the filing fee paid for his application?

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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2015 and ended on April 30, 2016. Monthly rent in the amount of $1,875.00 was payable on the first day of each month. A security deposit of $925.00 and a pet damage deposit of $925.00 were paid by the tenant to the landlords. The landlords returned the pet damage deposit in full to the tenant on May 14, 2016 by e-transfer. The landlords retained $600.00 from the security deposit and returned $325.00 to the tenant on May 14, 2016 by e-transfer. Move-in and move-out condition inspection reports were completed by both parties for this tenancy. The tenant provided a written forwarding address to the landlords on May 1, 2016 on the move-out condition inspection report. The landlords did not have any written permission to keep any amount from the tenant's security deposit. The landlords did not apply to retain the tenant's security deposit in their application.

The tenant seeks to recover double the value of the $600.00 portion of the security deposit that was not returned to him, totaling $1,200.00, because the landlords did not return the full amount to him or file a claim to keep the deposit. The tenant also seeks to recover the $100.00 filing fee paid for his application.

The landlords seek to recover $600.00 in strata fines from the tenant, $21.27 for registered mailing fees for their hearing-related documents, and $100.00 for the filing fee paid for their application.

The landlords provided strata letters, emails between the strata, landlords and tenant, as well as payment information to demonstrate that they paid $600.00 in strata fines due to alleged parking and behaviour violations by the tenant in April 2016. The tenant stated that on one occasion, his brother was visiting him, moving items and was not parked in the fire lane but in front of the garage. The landlords stated that this was clearly marked as a fire lane. The tenant said that when the strata member confronted him, they became involved in a verbal dispute so he told the strata member to "piss off" and shut the door in his face. The tenant said that he was charged twice for the same incident, one for parking and one for the verbal altercation, which he said was not permitted as per his verbal conversation with the association that deals with the condo home owners, CHOA. The landlords said that the tenant had no proof of the verbal conversation.

On another occasion, the tenant said that a guest was visiting his roommate living in the same rental unit and parked in the visitor's parking spot lawfully. The tenant stated that he was unlawfully fined for this alleged violation. The landlords claimed, as per the strata letter, that this one car was frequently parked in the visitor's parking, which was

not permitted. The tenant said that the strata letters misidentified his brother's car and the other visitor's car and provided incorrect information in the strata fine letters.

Analysis

Landlords' Application

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

I dismiss the landlords' application for registered mailing fees of $12.55 and $8.72. As advised to both parties during the hearing, the only hearing-related costs that are recoverable under section 72 of the *Act*, are for filing fees.

I dismiss the landlords' application for $600.00 in strata fees. I find that the landlords failed to meet parts 2, 3 and 4 of the above test.

I find that the landlords did not provide the tenant with the strata bylaws at any time during the tenancy, in order for the tenant to be aware of the strata rules for the property. The landlords said that it was their normal practice to provide these bylaws to all tenants, but when asked, they could not provide a specific date or method of serving these bylaws to the tenant, and the tenant denied receiving such bylaws.

I find that the landlords failed to show that the tenant caused the parking violations that he was accused of, as the tenant denied the violations. The tenant testified that he was unable to dispute the fines because the landlords paid for them right away. I find that the landlords took away the tenant's opportunity to properly respond to and dispute the fines, as was permitted in the strata letters. Because the strata letters are served to the home owners, not tenants, the tenant can only respond to the letters once the landlords notify him and allow him the opportunity to respond, rather than admitting liability by paying the fines. When the tenant received the emails from the landlords, containing

the strata complaint letter of April 19, 2016 and the $600.00 fine imposition on May 5, 2016, he responded to the strata by email immediately on April 19, 2016 and May 5, 2016. The landlords provided copies of these emails, showing that the tenant disputed the events and asked for further information from the strata. The landlords then paid the fines on May 9, 2016, without waiting for a response from strata to the tenant's dispute.

I find that the landlords failed to obtain a breakdown of the $600.00 in strata fines. Although the landlords provided proof that they paid $600.00 to the strata for fines issued by it, they only provided strata violation letters, which did not contain any breakdown amounts to show the cost of each fine, how many fines were imposed or how many bylaw violations occurred. The tenant said that he called the strata and was told that the maximum amount for any fine that could be issued by it was $200.00 so he assumed that he was charged $200.00 for three separate fines since he received three separate letters for the above two incidents.

The landlords said that they did not inquire about the breakdown of the $600.00 because they were trying to close a sale on the rental unit and they had to clear the title by paying the fines immediately. However, the strata letters provided by the landlords were dated April 8 and 16, 2016 and another letter for all the infractions is dated for April 19, 2016. The landlords claimed that they sold the property on May 3, 2016. They said that they did not receive notice of the fines until May 5, 2016 through email and they did not pay the fines until May 9, 2016. I find that the landlords did not inquire as to the number of strata bylaw violations, the amount of each fine or how many fines were imposed, despite the fact that they had time to do so. Yet, the landlords claimed that the $600.00 amount was so significant that they had to withhold a portion of the tenant's security deposit and waited almost six months for this hearing, in order to resolve the matter. I find that the landlords completely failed to mitigate their damages in this regard, due to their actions noted above.

Although the landlords did not specifically apply to recover their filing fee paid for their application, they indicated it in their monetary order worksheet. As the landlords were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee paid for their application.

Tenant's Application

Section 38 of the *Act* requires the landlords 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, the landlords are 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 landlords have 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 landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on April 30, 2016. The tenant provided a written forwarding address to the landlords on May 1, 2016. The landlords did not have permission to keep any amount from the tenant's security deposit. The landlords did not return the security deposit in full, as they retained $600.00 from it. The landlords' application did not seek to retain the tenant's security deposit; even if it had, it was filed more than 15 days after May 1, 2016, as it was filed on May 30, 2016.

The landlords continue to hold a portion of the tenant's security deposit, totaling $600.00. Over the period of this tenancy, no interest is payable on the entire security deposit. As per section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to double the amount of his security deposit of $925.00, totaling $1,850.00, minus the $325.00 portion already returned to him. The tenant is entitled to a monetary award of $1,525.00 for this claim.

Residential Tenancy Policy Guideline 17 requires me to double the amount of the original security deposit paid of $925.00 not simply the unreturned portion of $600.00. Although the tenant did not specifically apply for a doubling of the original security deposit amount of $925.00, he is not required to do so as per Residential Tenancy Policy Guideline 17, as he did not waive his right to double and he miscalculated the doubling.

As the pet damage deposit was returned within 15 days of May 1, 2016, I find that the tenant is not entitled to double the value of the pet damage deposit.

As the tenant was successful in his application, I find that he is entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of $1,625.00. Should the landlord(s) 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.

The tenant's application for a monetary order for the cost of emergency repairs is dismissed without leave to reapply.

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: December 13, 2016

Residential Tenancy Branch