Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MND, MNDC, MNSD, FF; MNDC, MNSD, RPP, FF

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the deposits, pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for her application, 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 67 minutes in order to allow both parties to fully present their submissions.

Preliminary Issue - Service of Documents and Previous Hearings

This matter was previously heard by a different Arbitrator on March 14, 2017 and a decision and monetary order were both issued on March 24, 2017 ("previous hearing," "previous decision," and "previous monetary order"). Both parties attended the previous hearing. The landlord applied for a review of the previous decision on the basis of fraud. A new review hearing was granted by another Arbitrator, pursuant to a review consideration decision, dated April 24, 2017.

By way of the review consideration decision, the landlord was required to serve the tenant with a copy of the review consideration decision, the notice of review hearing and the written evidence that he submitted with his review application. The tenant confirmed receipt of the above documents from the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the review consideration decision, the notice of review hearing and the landlord's written evidence.

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

The landlord confirmed that he provided additional written evidence and an amendment to his original application, after the previous hearing and before this new review hearing. For the reasons stated below, I notified the landlord that I would not be dealing with his amendment or additional evidence. I further informed the landlord that since I have confirmed the previous decision, dated March 24, 2017, for the reasons stated below, his amendment had already been dismissed and he did not have leave to reapply for this in the future at the Residential Tenancy Branch ("RTB").

Preliminary Issue – Review Hearing of One Narrow Aspect

Pursuant to section 82 of the *Act*, I am entitled to conduct a review hearing of the original applications based solely on the original record of the previous hearing, by reconvening the previous hearing or by holding a new hearing.

At the outset of the review hearing, I informed both parties that I would be holding a new hearing to deal with one narrow aspect of both parties' claims: whether the landlord's right to claim against the tenant's deposits was extinguished. I notified the parties that central to the above issue, was whether the landlord provided the tenant with two opportunities to conduct a move-out condition inspection and whether both parties participated in and completed a move-out condition inspection and report. I informed

the parties that I would only be dealing with the one aspect because the landlord had only applied for a review of the previous decision based on the one aspect. The landlord did not raise any other issues in his review application and he confirmed same during this review hearing.

Issues to be Decided

Did the landlord provide the tenant with two opportunities to conduct a move-out condition inspection?

Did both parties complete a move-out condition inspection and report?

Is the landlord's right to claim against the tenant's deposits for damages extinguished?

Is the tenant entitled to recover double the value of her deposits from the landlord?

Background and Evidence

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

Both parties agreed to the following facts. A security deposit of $1,100.00 and a pet damage deposit of $1,100.00 were paid by the tenant to the landlord. The landlord retains both deposits in full. A move-in condition inspection report was completed and signed by both parties. The landlord was permitted to communicate with the tenant's son in order to arrange a move-out condition inspection. The landlord sent a text message to the tenant's son on August 28, 2016, to arrange for a move-out condition inspection and the tenant's son agreed on behalf of the tenant. The landlord sent another text message to the tenant's son on August 29, 2016, to change the time for the move-out condition inspection and the tenant's son agreed on behalf of the tenant. The landlord provided a printed copy of the text messages. The landlord only provided the tenant with one opportunity to conduct a move-out condition inspection by way of text message only. The landlord did not use an approved RTB form referred to as RTB-22 entitled "Notice of Final Opportunity to Schedule a Condition Inspection."

The landlord testified that a move-out condition inspection was completed on August 29, 2016, as planned. Initially, he testified that both parties walked through the unit, filled out the move-out condition inspection report, signed it and he gave the tenant a copy on

the same date. When I questioned the landlord about the discrepancy in his evidence between the previous hearing and the current review hearing, he changed his evidence to state that the parties only walked through the unit on August 29, 2016, they did not fill out the report or sign it and he did not give the tenant a copy at that time. He stated that the parties met on September 8, 2016, at a different location in order to complete and sign the report, after which he gave the tenant a copy. The landlord said that the tenant moved the remainder of her belongings out of the rental until on August 30, 2016 in the morning and the new tenants moved in on the same date in the late afternoon. He claimed that this is why he wrote August 30, 2016 as the "move-out date" and the "move-out inspection date" on the move-out condition inspection report, rather than using the date of August 29, 2016.

The tenant testified that she did not complete a move-out condition inspection with the landlord at all. She claimed that she was ready to do one on August 29, 2016, but the landlord was busy showing the unit to new tenants and driving them around the area. She said that she had a carpet cleaner come in that day. She stated that both she and the landlord were fixing different parts of the rental unit that day. The tenant initially stated that all of the above events occurred on August 29, 2016, then some of the events occurred on August 30, 2016, and then she reverted back to August 29, 2016. The tenant explained that she met the landlord on September 8, 2016 and that is when she signed the move-out condition inspection report that the landlord had already completed himself. At the hearing, the tenant confirmed that she noted her disagreement with the move-out condition inspection report and disputed the landlord's claim for damages in the report itself. She stated that she also provided her written forwarding address to the landlord on the move-out condition inspection report on September 8, 2016 and the landlord agreed. The tenant maintained that she was not given a copy of the move-out condition inspection report until the landlord filed his original application for dispute resolution and provided her with his written evidence for the previous hearing.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's deposits 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 tenant's 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 deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits 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)).

I find that the landlord did not offer the tenant two opportunities to complete a move-out condition inspection in accordance with section 35(2) of the *Act*. I find that the first opportunity provided by the landlord, which was a text message, is not an appropriate service method under section 88 of the *Act*. Although the tenant agreed that her son received the text message and it was communicated to her, she stated that the move-out condition inspection never occurred as scheduled.

I accept and prefer the tenant's evidence that the landlord did not conduct the move-out condition inspection on the date that he offered of August 29, 2016, as he was busy with the new tenants. I agree with the previous decision finding that if the inspection had occurred on August 29, 2016, as claimed by the landlord, that the report would have been completed on that date, rather than 10 days later on September 8, 2016, at a different location. Therefore, I find that the landlord was obligated to offer the tenant a second opportunity to conduct a move-out condition inspection.

I find that the landlord did not provide the tenant with a second opportunity to perform a move-out condition inspection. *Regulation* 17(2)(b) requires that the landlord provide a second opportunity for a move-out condition inspection by providing the tenant with a notice in the approved RTB form. The landlord testified that he did not provide the tenant with the appropriate RTB-22 form. Therefore, as the tenant was not provided with a second opportunity to perform a move-out condition inspection, the landlord's right to claim against the deposits was extinguished. Although the tenant signed the move-out condition inspection report, she confirmed that it was completed by the landlord in her absence. Accordingly, I find that the landlord completed the move-out condition inspection report improperly without conducting a move-out inspection with the tenant.

For the reasons indicated above, I find that the landlord's right to claim against the deposits is extinguished by section 36(a) of the *Act*. This section states that the landlord cannot claim against the deposits for damage to the rental unit if he has not provided two opportunities to the tenant to complete a move-out condition inspection.

The tenant provided her written forwarding address to the landlord, who acknowledged receipt on September 8, 2016. I find that the tenancy ended on August 29, 2016, as per the tenant's evidence as to when she moved out. The tenant did not give the landlord written permission to retain any amount from her deposits. The landlord did not return the deposits to the tenant. Over the period of this tenancy, no interest is payable on the

landlord's retention of the deposit. In accordance with section 38(6)(b) of the Act, I find that the tenant is entitled to double the value of her deposits, totaling $4,400.00.

The Arbitrator at the previous hearing awarded the tenant double the value of her deposits, totalling $4,400.00. Therefore, I am not required to issue any new monetary order.

The remainder of the previous decision, dated March 24, 2017, regarding both parties' monetary and other claims, is confirmed in its entirety.

In accordance with section 82(3) of the *Act*, I confirm the previous decision and monetary order, both issued by the Arbitrator on March 24, 2017, at the previous hearing. This review hearing decision is to be read together with the previous decision, dated March 24, 2017.

Conclusion

The previous decision and monetary order, both dated March 24, 2017, are confirmed.

This review hearing decision is to be read together with the previous decision, dated March 24, 2017.

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: June 02, 2017

Residential Tenancy Branch