Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, FF, DRI, CNC, OLC

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlords applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord WJ (the "landlord") primarily spoke for both co-landlords.

As both parties were in attendance I confirmed that there were no issues with service of the parties' respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence and the tenant was duly served with the landlords' application and evidentiary materials.

At the outset of the hearing the parties testified that the tenant has vacated the rental unit and the tenancy has ended. The parties withdrew the portions of their applications dealing with an Order of Possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages and loss as claimed? Are the landlords entitled to retain all or a portion of the security deposit and pet damage deposit for this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit and pet damage deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Should the landlords be ordered to comply with the Act, regulations or tenancy agreement? Is the tenant entitled to a monetary order to recover the amount paid under a disputed rent increase?

Background and Evidence

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

The parties agreed on the following facts. The tenant began occupying the rental unit in September, 2012. The rent was $750.00. The landlord provided the tenant with a new written tenancy agreement in August, 2016 which set a new monthly rent of $860.00

beginning September, 2016. The tenant paid a security deposit and pet damage deposit at the start of the tenancy in 2012 and topped up that amount in 2016 under the new tenancy agreement. The landlord currently holds $415.00 for security deposit and $415.00 for pet damage deposit.

The tenant moved out of the rental unit on June 1, 2017. He provided a forwarding address to the landlord on that date. No condition inspection report was prepared at either the start or the end of the tenancy.

The landlord claims for loss incurred as a result of the damage caused to the rental suite by the tenant. The landlord testified that the tenant caused leaks in the bathroom when a shower faucet was dislodged from the wall on December 20, 2016. The landlord said that the tenant contacted the strata immediately and the strata arranged for an agent to attend to deal with immediate repairs. The landlord said that there were subsequent repairs necessitated by the initial damage. The landlord submitted an email he issued to the tenant outlining the loss as estimated at over $10,000.00. The landlord included various figures for labor, materials and tools in his email to the tenant. The landlord testified that the damage to the rental unit required major repairs by a restoration company and submitted photographs of the bathroom in support of the scope of repairs.

The tenant testified that the shower faucet was dislodged from the wall when he attempted to repair and tighten it. The tenant said that he contacted the emergency number provided to him but the landlord was not able to attend immediately. The tenant confirmed that an agent of the strata company for the rental building attended and performed immediate repair work. The tenant said that because the agent was unfamiliar with the rental unit there was some additional damage caused in the performance of emergency repairs.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

I accept the parties' evidence that the tenant provided written notice of the forwarding address on June 1, 2017. I accept the undisputed evidence of the tenant that the landlords failed to return the full security deposit and pet damage deposit to the tenant. The landlords filed their application for dispute resolution on June 20, 2017 which does not fall within 15 days of June 1, 2017, the time frame granted under section 38 (1)(c) of the *Act*

In addition, the parties testified that no condition inspection report was prepared at the start of the tenancy. While the landlord said that there was a visual walkthrough with the tenant at the start of the tenancy, no written condition inspection report was prepared. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

> 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> …
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlords have extinguished any right to claim against the security deposit and pet damage deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have failed to return the tenant's security deposit and pet damage deposit in full or file an application claiming against the amount within the 15 days of June 1, 2017, provided under section 38(1)(c) of the *Act*. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a $1,660.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

The tenant argues that the new tenancy agreement entered by the parties in September, 2016 constitutes a rent increase in contravention of section 41 and 42 of the *Act*. I do not find that the tenancy agreement of 2016 to be invalid or an attempt to circumvent the limits of an allowable rent increase. The parties testified that they initially entered into a tenancy agreement in 2012 when the tenant first took possession

of the rental unit. Both parties had poor memory of whether there were subsequent tenancy agreements. No copy of any earlier tenancy agreement was submitted into written evidence by either party. I find, based on the evidence, that prior to entering the September, 2016 agreement this tenancy was continuing on a month-to-month basis. I find that the parties entered a new tenancy agreement in September, 2016 which contained a new amount for monthly rent.

The evidence submitted does not show this to be a case where the landlord utilized successive fixed term tenancies to bypass the limits on allowable rent increase. Rather, in this instance the parties were in a periodic tenancy when they chose to renegotiate the terms of the tenancy and enter into a new agreement. As such I find that the amount of rent agreed upon by the parties of $860.00 to not be in contravention of the *Act*. Accordingly, I dismiss this portion of the tenant's application.

The tenant applies for a monetary order for the equivalent of one month's rent, as he said that he moved out due to the landlords' renovations. Pursuant to section 51(1) of the *Act*, a tenant who receives a 2 Month notice to end tenancy is entitled to receive the equivalent of one month's rent. In the matter there is no evidence that the landlords issued a 2 Month Notice. As I find there is insufficient evidence that a 2 Month Notice was issued I find that the tenant is not entitled to a monetary order for this portion of his claim.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the evidence of the parties that there was water damage to the rental unit arising from an incident on December 20, 2016. I accept the tenant's evidence that the original damage was caused when he was performing work in the rental unit bathroom. However, I find that there is insufficient evidence to support the full amount that is being claimed by the landlords. The tenant testified that after the initial leak the landlords' agents from the strata attended to attempt repairs and further damage was done during this time.

The landlords submitted into evidence some photographs of the rental unit and copies of email correspondence with the tenant where the landlord provides calculations for repairs and labour. In addition the landlord submitted into written evidence a few receipts for home repair parts. I find this to be insufficient evidence to support the landlords' full claim. I find little support for the calculation of labour provided in the email correspondence. There is no written evidence in support of the landlord's claim of the length of time the repairs took and the hourly rate that was paid. If the landlord was charged for the costs of emergency repairs by the strata or a restoration company one would expect that there to be detailed breakdown of the work performed. Furthermore, I find there is insufficient evidence to show that the repairs were necessitated by the tenant's initial damage and not from intervening factors. The landlord submitted photographs of the bathroom wall in support of their position of the intrusive nature of repairs. While it is possible that removing and retiling of an entire wall was necessitated by the tenant's initial damage it is the onus of the landlord, as the claimant, to show on a balance of probabilities, that this damage was a direct result of the tenant's actions. I find there is insufficient evidence to meet this onus.

I also note that in the email correspondence with the tenant the landlords wrote on May 4, 2017 that they intended to "completely repair both bathrooms, change floors and renovation the suite". I find that there is insufficient evidence to show that the monetary amount claimed by the landlord is solely to restore the rental unit to the condition it would have been in but for the tenant, and not renovations which improved upon the original condition of the rental unit.

I accept that there was some damage caused by the tenant, both in the bathroom and throughout the rental unit, but I find there is insufficient evidence to support the landlords' full claim. I find that under the circumstances, in the absence of compelling documentary evidence, a monetary award of $200.00, approximately half of the security deposit for this tenancy, to be appropriate.

As I have dismissed the bulk of the landlords' application I find they are not entitled to recovery of their filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $1,245.00 under the following terms:

Item	Amount

Double Security Deposit ($415 x 2)	$830.00
Double Pet Deposit ($415 x 2)	$830.00
Less Landlords' Award	-$200.00
TOTAL	**$1,460.00**

The landlords must be served with this Order as soon as possible. Should the landlords 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: July 12, 2017

Residential Tenancy Branch