Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and an administrative penalty against the landlord.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The tenant testified the landlord was served with her evidence for this Application for Dispute Resolution, by registered mail on June 20, 2017. The landlord confirmed that he received the tenant's evidence on June 23, 2017.

The tenant submitted that she could not serve her evidence because it was in storage and she couldn't access it. I note that the tenant moved out of the rental unit on May 13, 2015 and waited until January 27, 2017 to file her Application for Dispute Resolution. However, she did not serve her evidence to the Residential Tenancy Branch until June 20, 2017, over 6 months after she filed her Application.

Residential Tenancy Branch Rule of Procedure 2.4 requires that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch the applicant must submit: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

Rule of Procedure 3.1 requires that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) The Application for Dispute Resolution;
b) The notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
c) The dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
d) Any other evidence submitted to the Residential Tenancy Branch with the Application for Dispute Resolution, in accordance with Rule 2.5

Rule of Procedure 3.14 allows documentary and digital evidence that is intended to be relied on at the hearing that was not available to be provided at the time an Application for Dispute Resolution must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

While the issues raised in this Application do not involve the tenant seeking to cancel a notice to end tenancy she was required to submit all of her relevant evidence when she filed her Application for Dispute Resolution on January 27, 2017, to the extent possible. I accept the tenant submitted a Monetary Order Worksheet with her Application but she did not serve the landlord or the Branch until 6 months later with her evidence.

In the alternative that for some reason she could not submit this evidence at the time she submitted her Application for Dispute Resolution she was required to ensure the landlord had this evidence no later than 14 days before the hearing. As the hearing was conducted on July 4, 2017, to meet this requirement the landlord should have received the evidence no later than June 20, 2017. The landlord received the evidence on June 23, 2017.

In addition, Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence. Despite the tenant's submissions that she could not obtain her documents from storage she has provided no evidence to support this claim or to establish what changed that allowed her then to access her evidence.

As a result of these findings above, I also find the tenant has deliberately delayed the service of the evidence she intended to rely upon for this hearing until the last possible time frame with no proven or justifiable reasons for the delay, contrary to Rule of Procedure 3.11. Furthermore, I find that the tenant also failed to provide her evidence in compliance with Rule of Procedure 3.14 at least 14 days before the hearing.

As a result, I have not considered the tenant's documentary evidence, with the exception of the written explanation of her claims. I have considered this written explanation because it provides clarity of her claim and it was the basis for the landlord's response which he did serve the tenant and the Residential Tenancy Branch in compliance with Rule of Procedure 3.15.

Rule of Procedure 3.15 states the respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. The tenant received the landlord's evidence on June 26, 2017 or 8 days before the hearing.

Despite the tenant checking of, on her Application for Dispute Resolution, that she was seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement at the outset of the hearing the tenant submitted for clarity and in relation to her written submissions that she sought to have administrative penalties charged against the landlord pursuant to Section 95 of the *Residential Tenancy Act (Act)*.

Section 95 (1) of the *Act* stipulates that a person who contravenes any of a number of specified provisions under the *Act* commits an offence and is liable on conviction to a fine of not more than $5 000. Section 95(2) states that a person who coerces, threatens, intimidates or harasses a tenant or landlord in order to deter the tenant or landlord from making an application under this *Act*, or in retaliation for seeking or obtaining a remedy under this *Act* commits an offence and is liable on conviction to a fine of not more than $5 000.

Section 95(3) says a person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000. And Section 95(4) states a person who gives false or misleading information in a proceeding under this *Act* commits an offence and is liable on conviction to a fine of not more than $5 000.

I note that the portion of the tenant's claim for the landlords' alleged breaches of the *Act*, orders; the provision of false or misleading information; and any coercions or threats is in the amount of $5,000.00. Furthermore, in relation to this portion of the tenant's Application she has provided no evidence to establish the value of any losses she may have suffered as a result of any of these actions on the part of the landlord.

As noted on the Residential Tenancy Branch website parties seeking administrative penalties against the other party in a tenancy relationship do not apply for the penalties through the Dispute Resolution process. There is a separate procedure seeking administrative penalties which is outlined on the website at http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing.

As a result, I have not considered the tenant's request for administrative penalties in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of double the amount of the security deposit and utility charges, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

While there is some dispute between the parties as to the nature and terms of the tenancy they do agree on the following details:

- The tenant moved into the residential property in May 2012;
- At the time the tenant first moved into the property the primary tenant contact for the landlord was the tenant JG;
- By September 2012 and until August of 2014 the primary tenant contact for the landlord was the tenant BM;

Beginning in August 2014 the tenant submits that she was the only tenant and that of the other occupants living in the residential property were her tenants. The landlord disagrees and submits that he had separate tenancy agreements with each of the occupants in the property.

The tenant submits that when she took over the tenancy she had to pay the landlord $1,200.00 as a security deposit by using a cheque from her sister and that in January 2015 when rent went up she was required to provide an additional amount of $25.00.

The landlord submitted that when the tenant vacated the rental unit he wrote an email to the tenant on May 12, 2015 that he had a security deposit of $285.00 that he was retaining for the 13 days in May that she had stayed in the residential property. He later submitted that after speaking with the former tenant JG he determined that the tenant never paid any security deposit at all.

The tenant seeks also compensation for the portion of utility bills that some of the people that she indicates were her tenants had not paid. The landlord considered these has his individual tenants who all lived in the residential property under separate tenancies. The tenant seeks $387.71 for unpaid utilities.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenant has failed to provide any evidence at all that she had paid the landlord any amount of security deposit.

As a result, I find the tenant has failed to establish the landlord had a need to return her any amount for a security deposit and I dismiss this portion of her Application.

Likewise, when two parties to a contract have different interpretations of the terms of that contract it is virtually impossible for a third party to determine what those terms were. However, when the parties can agree on the terms there is no reason why those verbal terms could not be enforced. In the case before me the tenant asserts that she was the only tenant and that all of the other people living in the rental unit were her tenants.

The tenant claims that these people, her tenants have failed to pay her for the utilities that they owed as a result of their tenancies with her and yet she seeks compensation from her landlord for this lack of payment. If in fact this version of the tenancy is correct then the landlord cannot be held responsible for compensation for any losses the tenant incurred from her tenants.

In the case that the landlord named in this Application was in fact the landlord of all of the residents of the residential property but the utilities were in the name of this tenant and the other residents were required to pay her she still must seek compensation from the other occupants as they are the ones who did not pay her.

The tenant lived in the residential property for three years and was responsible for the payment of utilities for the majority of that time. There is no evidence before me that shows the tenant informed the landlord that she thought this arrangement was unfair and that she should not be held responsible for the collection of utility monies.

As a result, I am not satisfied that the landlord should be held responsible for any of the monies owed by the tenant's roommates for utility costs. I dismiss this portion of the tenant's claim.

Conclusion

Based on the above, I find the tenant has failed to establish any of her claim and I dismiss her Application for Dispute Resolution in its entirety 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: August 04, 2017

Residential Tenancy Branch