Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement and for return of all or part of the pet damage deposit or security deposit.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

At the commencement of the hearing, the tenant applied to adjourn the hearing because evidence that the tenant intended to rely on was in storage and the tenant has been unable to retrieve it. The landlord opposed the adjournment, and I found that since the tenant filed the application for dispute resolution in May, 2017, the tenant has had ample time to provide evidence to the Residential Tenancy Branch and to the landlord, and the application to adjourn wad denied.

Further, the tenant submitted that she had not received any evidence from the landlord, and was advised by Canada Post that some mail items over the summer months had not been delivered in a reasonable time. The landlord submitted that it was sent to the tenant at the address on the Tenant's Application for Dispute Resolution by registered mail on September 13, 2017, but has not provided any evidence of that and did not track the item to see if it had been delivered. Since neither party has received the evidence of the other party, I decline to consider any of it.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property and for loss of use of a portion of the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began in December, 2011 and the tenant moved out of the rental unit on May 18, 2015. Rent in the amount of $1,475.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $737.50. The rental unit is a cabin, and there is a written tenancy agreement.

The tenant further testified that the landlord received the tenant's forwarding address in writing on May 18, 2015 and the landlord has returned $402.60 of the security deposit to the tenant. The tenant did not agree in writing that the landlord keep any portion and the landlord has not served the tenant with an application for dispute resolution claiming against the security deposit.

The tenant claims $4,500.00 from the landlord which includes half a month's rent for several months due to portions of the rental unit being unusable due to mold and water damage, partly caused by the gutters leaking into the rental home. The tenants' family had to sleep on couches in the living room and the bathroom was leaking and not usable requiring the family to use the ensuite. Half the house was not useable and the landlord would not fix it during the tenancy. Numerous repairs were promised at move-in, one of which happened. The linoleum was lifting in the living room, and the tenant's son sustained quite an injury to his foot. The landlord was well aware of repairs required, black mold and rat feces and that it was not a healthy environment. The landlord also had to replace the wood stove at one point during the tenancy due to an order by the fire department, and that was the main source of heat in the rental home. There were very few electric baseboards in the house.

The tenant's claim also includes compensation due to the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property. The tenant had disputed the notice and the parties had agreed at arbitration that the tenancy would end on May 15, 2015 and the landlord obtained an Order of Possession. The reason for ending the tenancy was extensive renovations and repairs required that also required the rental unit to be vacant. However, the landlord had pre-rented to another tenant prior to this tenancy ending, having made an agreement with the new tenant to do the repairs and renovations in order to keep the rent at $1,475.00 as

cautioned by the Arbitrator. The arbitrator had made it clear to the landlord that if re-rented once renovations and repairs were complete, the landlord could not charge a new tenant more for rent. The new tenant is a co-worker of the tenant's son who gave that information to the tenant's son, and that other promises were made by the landlord respecting repairs that have not been kept. Also, the tenant lives close by the rental unit and has been watching. The new tenant's belongings were at the rental unit within 3 weeks after this tenancy ended. The new tenant also took the landlord's son through the rental unit within 2 or 3 months after the new tenant moved in to show what work the new tenant had done.

The landlord testified that a lot of the tenant's claims are false. There is no agreement with the current tenant. That tenancy began on July 1, 2015. The landlord completely tore down and gutted the kitchen, plumbing, electricity and drywall, and completely replaced all flooring. The current tenant resided in the rental home prior for a year and upon discovering that the rental unit was vacant again, the pleaded with the landlord to re-rent. It was torn apart at that time but the landlord advised that it would be ready to occupy for July 1, 2015. There was no pre-agreement with the new tenant, and the landlord knew the tenant would be watching and lived close by.

At the time of the previous hearing, the landlord had provided a letter from a contractor that said he didn't know how long it would take, but power and water had to be turned off and the tenant had a lot of items, such as mattresses and boxes that contributed to mold. The home is 1300 or 1400 square feet with electricity as the primary heating system, and the wood stove was not required at all. Further, there was no moisture damage to drywall, and testing showed no mold.

The landlord did not make an application for dispute resolution claiming against the security deposit, nor did the landlord receive the tenant's consent in writing to keep any portion of it.

Analysis

The *Residential Tenancy Act* does not permit a landlord to make any deductions from a security deposit or pet damage deposit unless the landlord has the written consent of the tenant. A landlord must return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the parties agree that the landlord received the tenant's forwarding address in writing on May 18, 2015 and the landlord returned a portion of the security deposit to the tenant.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-off which states, in part:

> 3. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:
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> - any arbitrator's monetary order outstanding at the end of the tenancy[17];
> - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit[18] (see example B below);
> - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished[19], any amount the tenant has agreed in writing the landlord may retain for such damage[20].
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> 4. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
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> - Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 <u>without</u> the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
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> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

In this case, the amount of the security deposit was $737.50, and doubled is $1,475.00. The landlord returned $402.60, and the difference is $1,072.40. I find that the tenant has established that claim.

With respect to the balance of the tenant's claim, in order to be successful, the onus is on the tenant to satisfy the 4-part test: :

1. that the tenant has suffered damages or a loss;
2. that the damage or loss suffered was a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate any damage or loss suffered.

The landlord does not deny that repairs were required, and did not dispute that the reason for ending the tenancy was for extensive repairs or renovations that required the rental unit

to be vacant. With respect to the tenant's claim that the tenancy was devalued by the landlord's failure to make repairs during the tenancy, in the absence of any evidentiary material, there is nothing by which the amount of any such devaluation can be measured. The tenant claims half the monthly rent for several months, but was not able to indicate how many or which months. I find that the tenant has failed to satisfy the test for damages with respect to repairs required during the tenancy.

Further, the landlord denies that any pre-arrangement was made between the landlord and the new tenant. All I have before me is the testimony of the tenant that the new tenant told her son that. Hear-say testimony is not evidence, and I find that the tenant has failed to establish that the landlord did not use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,072.40.

This order is final and binding and may be enforced.

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 29, 2017

Residential Tenancy Branch