Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on July 16, 2017 with an amendment made January 15, 2018 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section Order of Possession - Section 55;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on December 20, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

Shortly after the hearing commenced with the Landlord providing evidence on her claims the Landlord asked for an adjournment. The Landlord stated that she experienced a family member's death and a life threatening illness by another family member since making the application and that the hearing so far made it clear to her that she was not properly prepared for this dispute. The Landlord states that the ill family member resides in another province. The Landlord states that she is not currently with that family member but has been travelling back and forth and is not in a good state. The Tenant states that the Tenant is currently in the process of moving out of country, is working full time with long hours and has gone to great length to prepare for this hearing and the dispute. The Tenant argues that to adjourn the hearing would prejudice the Tenant.

Rule 7.8 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "Rules") provides that at any time after a hearing begins the hearing may be adjourned if the circumstances warrant an

adjournment. Rule 7.9 of the Rules provides that in considering an adjournment consideration will be made on whether the adjournment is required to provide a fair opportunity to be heard and the possible prejudice to each party. Given that the Landlord's application was made over six months ago, as there is no evidence of any immediate emergency, medical or otherwise, noting that there is no evidence that an agent could not have represented the Landlord at the hearing, and considering that the Tenant will shortly be relocating out of country, I find that the Landlord's reasons are not sufficiently compelling in the face of the prejudice to the Tenant that would occur if an adjournment were granted. I therefore decline to adjourn this hearing.

The Landlord states that the amendment seeking an increase to the monetary amount was uploaded as an evidence package on the direction of the RTB. The Tenant objects to the amendment on the basis that the Landlord only made the amendment a few days ago.

Rule 4.6 of the Rules provides that an amendment to an application must be received the other party no less than 14 days before the hearing. Based on the undisputed evidence of the date of the amendment I find that the Landlord did not make its amendment within the allowed time. Further it would be prejudicial to the Tenants to accept the amendment given the lack of time to respond to the increased claims. I therefore decline the amendment to the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?
Is the Landlord entitled to the recovery of the filing fee?
Is the Tenant entitled to the monetary amounts claimed?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a furnished unit started on November 1, 2014 and ended on June 30, 2017. Rent of $2,150.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $1,075.00 as a security deposit. As of January 1, 2017 the rent was increased to $2,230.00. The Parties mutually conducted a move-in and move-out inspection.

The Landlord states that a condition inspection report was completed at move-in and a copy taken by photo was emailed to the Tenant immediately at the end of the inspection. The Landlord states that a copy of this email was provided as evidence. The Tenant states that no copy of this report was given to the Tenant and that there is no copy of an email attaching a report in the Landlord's evidence package.

The Landlord states that after the Parties completed the move-out inspection of the unit, the environment became hostile so the Landlord left and completed the move-out report the next day on the basis of the photos taken during the inspection. The Landlord states that no report form was brought by the Landlord for the inspection. The Landlord states that a copy of this report was provided to the Tenant only with the Landlord's application. The Tenant states that after the move-out inspection the Landlord wanted the Tenant to sign a blank paper to which the Landlord would later add the damages. The Tenant provided video from the move-out inspection.

The Landlord states that the Tenant provided its forwarding address on the move-in report and by registered mail received by the Landlord on July 8, 2017. The Tenant states that the Landlord was given their written forwarding address in person on June 15, 2017 and also by email on June 27, 2017 and by registered mail on July 6, 2017.

The Landlord states that the Tenant damaged the front loading washing machine, that was new in 2012, by failing to follow cleaning instructions provided by the manufacturer and as given to the Tenant by the Landlord at the onset of the tenancy. The Landlord states that because of this failure mold grew on the rubber seal, leaving the machine with a smell. The Landlord states that as the mold was not visible no photos were provided. The Landlord states the seal was removed and replaced for a cost of $411.00. The Landlord did not provide the receipt or invoice for this repair. The Tenant denies that there was any mold as none was visible. The Tenant states that there was a smell in the machine, that they reported this to the Landlord, that other machines in the building had the same issue and that they followed instructions and used a refresher for the machine. The Tenant argues that there is insufficient evidence that the machine was damaged by the Tenant.

The Landlord states that the Tenant damaged the hydraulic lift and stay mechanism on the bed. The Landlord states that while inspecting the unit the Landlord had lifted the bed and it would not go back down. The Landlord states that the Tenant wanted to force it closed indicating to the Landlord that the Tenant's use of the lift caused the damage. The Landlord states that it was repaired by a carpenter for $100.00. No receipt was provided for this claim. The Tenant states that the lift was rarely used and never to the full upright position requiring the use of the "stay". The Tenant states that it was unaware that the bed would not stay up and suggests that perhaps only some oil was required. The Landlord states that the lock mechanism would not work and was clearly over-used by the Tenant.

The Landlord states that the Strata issued a fine of $200.00 for the Tenant's use of the unit as an Airbnb. The Landlord states that the Strata rules were given to the Tenant with the Form K attached to the tenancy agreement. The Landlord states that the Strata first sent a letter saying that it was going to fine

the Landlord and that the Strata later took the money automatically out of her account. The Landlord claims $200.00. The Tenant states that the Landlord has not provided any evidence of having been assessed with a fine or having paid a fine.

The Landlord states that no repairs have been made or costs incurred for the remaining damages and costs claimed. The Landlord states that the unit was rented again to another tenant to start approximately July 21, 2017 at a rental rate of $2,250.00. It is noted that initially the Landlord stated that she was not sure of the rental amount and gave evidence of two different amounts.

The Tenant argues that the Landlord did not file its application within the 15 days allowed and the Tenant claims return of double the security deposit. The Landlord argues that the application was made within the time required.

The Tenant states that during an inspection of the unit on June 15, 2017 it was discovered that the smoke alarm was not working. The Tenant states that the Landlord asked the Tenant to replace the alarm for repayment by the Landlord. The Tenant states that the receipt for the purchase of the alarm was sent to the Landlord and not paid. The Tenant states that no copy of the receipt was retained by the Tenant. The Tenant claims $43.68. The Landlord states that the Tenant offered to purchase the smoke alarm and that no receipt was provided by the Tenant.

The Tenant states that on June 15, 2017 the Tenant gave the Landlord notice to end the tenancy for August 31, 2017. On the same date the Landlord asked the Tenant to end the tenancy earlier as the Landlord wished to use it due to the Landlord's family illness. The Tenant states that they then signed a mutual agreement to end the tenancy for July 7, 2017 but moved out of the unit on June 30, 2017 instead. The Tenant states that the unit was never used for the purpose stated by the Landlord and that the Landlord rented it out shortly after the end of the tenancy. The Tenant claims $2,230.00 in compensation for the Landlord not having a good faith intention in ending the tenancy.

The Tenant confirms that the claim for two filing fees was made in error and that only one filing fee of $100.00 was paid and is being claimed.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the

Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established.

The Landlord's evidence initially was not straightforward. While I was prepared at the beginning of the hearing to accept that the Landlord was merely nervous from feeling unprepared, given the extent of the evasive evidence after allowing the Landlord significant time to be clear on almost each point, I came to the conclusion that the Landlord was deliberately giving vague and evasive evidence. For this reason I consider that the Landlord's oral evidence to be simply not credible or reliable. I also therefore have an overall preference for the Tenant's evidence. For this reason and given the lack of receipts or proof of payment for the costs claimed in relation to the clothes washer, the bed and the strata fine, I find that the Landlord has not substantiated the costs claimed and I dismiss these claims. Further as no repairs were made for the additional damages claimed and as the Landlord rented the unit out with an increased amount of rent payable I find that the Landlord has not substantiated that these costs were incurred or that there were any losses established with the damages claimed. I dismiss the remainder of the costs claimed. As none of the Landlord's claims have been successful I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 24 of the Act provides that 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 does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Given the lack of any supporting evidence that the move-in report was copied to the Tenant I find on a balance of probabilities that the Landlord did not provide a copy to the Tenant. For this reason I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in. Given this prior extinguishment it is not necessary to determine if the right to claim against or for return of the security deposit was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the provision of the forwarding address I find that the Landlord had the forwarding address at least by July 8, 2017. As the Landlord's right to claim against the security deposit for damages to the unit was extinguished prior to move-out and as the Landlord only has claims of damage to the unit, I find that the Landlord was required to return the full security deposit to the Tenant after the receipt of the forwarding address. The Landlord still retained its right to make its

claim for damages. As the Landlord did not return the security deposit at all, I find that the Landlord must now pay the Tenant double the security deposit of **$2,150.00.**

There is no dispute that the smoke alarm required replacement and was replaced by the Tenant. As the Landlord is responsible for ensuring a working smoke alarm and as there is no evidence that the Tenant caused the smoke alarm to be damaged I find that the Tenant has substantiated a claim for compensation in having replaced the alarm. However given the lack of a receipt I find that the Tenant has only substantiated a nominal sum of **$25.00**.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Landlord did not serve the Tenants with an effective notice to end tenancy for landlord's use, the requirement of a "good faith intention" is not relevant to the mutual agreement to end the tenancy. As there is no evidence that the Tenant was forced or under duress to enter into the mutual agreement and noting that the Tenant gave its notice to end the tenancy prior to the mutual agreement I find that the Tenant has not substantiated any entitlement to compensation under the Act or otherwise for having ended the tenancy. I therefore dismiss the claim for $2,230.00.

As the Tenant's application has had merit I find that the Tenant is entitled to the **$100.00** filing fee for a total entitlement of **$2,275.00**.

Conclusion

The Landlords application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **$2,275.00**. If necessary, this order may be filed in the Small Claims 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: January 19, 2018

Residential Tenancy Branch