Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for loss or other money owed, return of their security deposit, and recovery of the fling fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the addresses provided in the hearing

Preliminary Matters

At the outset of the hearing the respondent indicated that they are the agent for the Landlord M.S. Although M.S. is not the Landlord listed in the tenancy agreement or the Application, the Agent testified that M.S. became the Landlord and owner of the property in August 2016. As both parties were in agreement that the agent represents the current owner, I proceeded with the hearing on that basis. As section 1 of the Act includes the owner's agent in the definition of a Landlord, the agent will be referred to as the "Landlord" throughout this decision.

The Landlord also took issue with the service of the Application, Notice of Hearing and the documentary evidence from the Tenant. The Landlord stated that the Tenant

originally blacked out required information in the above noted documents and did not provide him with an un-redacted copy for some time. As a result, the Landlord argued the he was not properly served with the Application, Notice of Hearing, and evidence as required by the Rules of Procedure.

The Tenant acknowledged that allegations made by the Landlord. However, when asked, the Landlord acknowledged that they had received un-redacted copies of the Application, evidence, and Notice of Hearing well in advance of the hearing and had sufficient time to consider and respond to them.

While I have considered the Landlord's objections and find that the actions of the Tenant were both devious and contrary to the Rules of Procedure, ultimately I find that the Landlord received the evidence before me well in advance of the hearing and had sufficient time to consider and respond to it. Further to this, as the Landlord appeared at the hearing on time and ready to proceed, I'm satisfied that the delay in receiving the un-redacted copy of the Notice of Hearing did not prevent him from attending and fully participating in the hearing. Based on the above, I find that there is no prejudice to the Landlord in accepting and considering the Tenants documentary evidence or proceeding with the hearing as scheduled. The Tenant's evidence was therefore accepted for consideration and the hearing proceeded as schedule.

Despite the above, I caution the Tenant that similar behaviour in the future may result in an adjournment, an exclusion of their evidence from consideration, or the dismissal of their claim with or without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for damage or loss and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Tenant entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began on December 15, 2013, and that rent in the amount of $580.00 was due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of $290.00 was paid by the Tenant and the Landlord confirmed in

the hearing that they still hold this amount. The parties agreed that over the course of the tenancy, rent was increased and at the time the tenancy ended, rent in the amount of $600.00 was due on the first day of each month.

Both parties agreed that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on or about August 3, 2017. The 10 Day Notice in the documentary evidence before me, dated August 3, 2017, has an effective vacancy date of August 13, 2017, and indicates that as of August 2, 2017, the Tenant owed $600.00 in outstanding rent. Although the Tenant provided testimony regarding why rent was not paid, the Tenant acknowledged that they did not pay the rent or dispute the 10 Day Notice within the timeframe allowed under the *Act*, and both parties agreed that the Tenant voluntarily vacated the rental unit on August 17, 2017, as a result of the 10 Day Notice.

While the Application indicates that the total monetary amount sought by the Tenant is $1,000.00, the testimony and documentary evidence before me from the Tenant indicates that the Tenant is seeking $2,566.25 in damages associated with wrongful eviction and the filing of the Application, $186.64 for emergency repairs completed, and $2,000.00 for loss of use and quiet enjoyment.

Despite the fact that the Tenant did not dispute the 10 Day Notice and acknowledged that they voluntarily moved out of the rental unit on August 17, 2017, the Tenant argued that the Landlord did not have cause to evict him and sought a monetary award in the amount of $1,000.00 for costs associated with the wrongful eviction such as the filing of the Application, printing and mailing costs, Land Title searches, moving, storage, and ferry fee's, cell phone charges, gas, recreational facility user fees, loss of income, and pain medication.

The Landlord argued that as the Tenant did not dispute the 10 Day Notice and moved out voluntarily, they are not responsible for any costs associated with the Tenant's move, their subsequent inability to find suitable housing, or any costs associated with the filing of this Application.

The Tenant sought $2,000.00 for loss of quiet enjoyment and loss of use of the fridge. They stated that the noise from their fridge was so loud that it kept them awake and that when the Landlord failed to repair the fridge as requested, they moved the fridge into the hallway themselves. The Tenant stated that the fridge was removed from the hallway shortly thereafter and was not returned to them for over a month.

The Landlord denied that they had ever been advised by the Tenant that there was an issue with the fridge and stated that had they been aware of an issue, an in-unit repair would have been completed right away. The Landlord acknowledged that the fridge was moved from the hallway to the basement but stated when they knocked on the Tenant's door to inquire if it was their fridge, they were advised by the occupant that it was not. The Landlord testified that as soon as they became aware that the fridge belonged to the Tenant, it was repaired and returned as soon as possible. The Landlord therefore argued that they should not be responsible for any costs associated with the fridge or the temporary loss thereof as the Tenant failed to advise them that there was an issue or that they had removed the fridge from their unit.

When asked, the Tenant could not recall how or when they advised the Landlord that there was an issue with the fridge. The Tenant also acknowledged that they did not advise the Landlord that they were removing the fridge from their unit prior to doing so. When asked how the Landlord would have known about the removal of their fridge, given that he did not advise the Landlord about it in advance, the Tenant simply stated that the Landlord knew it was his fridge.

The Tenant sought $186.64 for an electrical panel load test which they obtained based on their belief that the electrical panel in their unit is not up to code. The Tenant acknowledged that they did not receive permission to complete this test or approval that the Landlord would pay for it prior to having it completed. The Tenant also acknowledged that they did not follow section 33 with regards to emergency repairs.

The Landlord testified that there is nothing wrong with the electrical and reiterated that they never approved the test or agreed to pay for it.

The Tenant also sought the return of his security deposit, less $82.95 for the costs of carpet cleaning. The Tenant acknowledged that he did not give the Landlord a forwarding address when he moved out as he did not have housing but stated that the Landlord has had his mailing address since he received the Application. The Landlord testified that he did not know whether this was the Tenants mailing address for the purpose of returning the security deposit and would have applied to keep the deposit had the Tenant provided him with his forwarding address as required by the *Act*. The Landlord also noted that the address on the Application is different than the mailing address given by the Tenant in the hearing for receipt of this decision, which he argues is further support for his position that he did not know if the address on the Application was the Tenant's forwarding address. The Landlord also disputed the carpet cleaning costs provided by the Tenant, stating that the quote he received for this service is

$107.00. Both parties agreed that there was no written agreement at the end of the tenancy for the Landlord to retain any portion of the security deposit and neither party provided any testimony regarding start or end of tenancy condition inspections or reports.

Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that the onus to prove their case is on the person making the claim. In this matter it is the Tenant who has made several claims and as a result, I find that that it is incumbent upon the Tenant to satisfy me, on a balance of probabilities, of their entitlement to the claims made.

Although the Tenant argued that they were wrongfully evicted and sought costs associated with this eviction, they acknowledged that they did not dispute the 10 Day Notice and voluntarily moved out as a result of receiving it. Section 46 of the *Act* states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Ultimately both parties agreed that rent was not paid in full by the Tenant within the five days allowable under the *Act* and the Tenant acknowledged that they did not dispute the 10 Day Notice and voluntarily moved-out. As a result, I find that the Landlord is not responsible for any costs associated with the Tenant's move or subsequent lack of housing and their claim for $2,566.25 in damages associated with wrongful eviction is dismissed without leave to reapply.

While the Tenant sought $2,000.00 for the loss of their fridge and loss of quiet enjoyment, the Tenant could not provide me with any details regarding the level of noise from the fridge other than that it was so loud that it kept them awake. The Tenant also did not provide any evidence to corroborate this testimony such as witness statements or audio recordings of the noise. As a result, the Tenant has not satisfied me that they suffered a loss of quiet enjoyment as a result of noise from the fridge and their claim for this loss is dismissed without leave to reapply.

Although the Tenant sought compensation for the loss of use of their fridge, they were unable to provide any detailed information regarding how or when they advised the Landlord that the fridge required repair or that they had removed it from their suite.

Further to this, the Tenant acknowledged removing the fridge from their unit themselves, without prior approval or notice to the Landlord. As a result, I find that the loss of use of the fridge is a direct result of the actions of the Tenant and I therefore dismiss the Tenants claim for loss of use of the fridge without leave to reapply.

Although the Tenant sought $186.64 for an electrical panel load test, they acknowledged that they did not receive approval from the Landlord to complete this test and did not submit any documentary evidence that it either meets the definition of an emergency repair or that they followed the steps required in order to be reimbursed for an emergency repair pursuant to section 33 of the *Act*. As a result, the Tenant's claim for reimbursement of this cost is dismissed without leave to reapply.

Section 38 of the *Act* states that except as provided in subsection (3) or (4) (a), 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 do one of the following:

- Repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- Make an application for dispute resolution claiming against the security deposit or pet damage deposit.

However, section 38 of the *Act* also states that the tenant's right to the return of a security deposit or a pet damage deposit and the landlord's right to retain the security deposit or pet damage deposit does not apply if the party in question has extinguished their rights under sections 24 or 36 of the *Act* in relation to the start or end of tenancy condition inspections.

As neither party has provided sufficient evidence in relation to the start and end of tenancy condition inspections, I am therefore unable to determine if either party has extinguished their rights in relation to the security deposit. As a result, I dismiss the Tenant's claim for the return of the security deposit with leave to reapply. If the Tenant has not already done so, they are encouraged to provide the Landlord with written verification of their current forwarding address for the purpose of returning the security deposit or making a claim against it.

As the Tenant was not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Tenant's Application for a Monetary Order for loss or other money owed as the result of wrongful eviction, loss of use of the fridge, loss of quiet enjoyment and emergency repairs is dismissed without leave to reapply.

The Tenant's Application for the return of their security deposit is dismissed with 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: February 28, 2018

Residential Tenancy Branch