Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to obtain a return of a portion of the security deposit and the full FOB deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 56 minutes. The tenants' agent TW ("tenant") and the landlord's two agents, landlord BS ("landlord") and "landlord LW," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed that he had permission to speak on behalf of both tenants as an agent at this hearing. The landlord confirmed that he was the property manager and landlord LW confirmed that he was the building manager, both employed by the landlord company named in this application. Both the landlord and landlord LW confirmed that they had authority to speak on behalf of the landlord company as agents at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the legal name of the landlord company. The landlord consented to this amendment during the hearing.

Preliminary Issue – Use of Speakerphone and Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
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> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

This hearing began at 11:00 a.m. and ended at 11:56 a.m. The hearing was lengthened by the fact that the landlord was disruptive and had to be repeatedly cautioned.

At the outset of the hearing, I asked the landlord to remove his telephone from speakerphone. I informed him that I was not able to hear properly because the speakerphone was causing echoing and feedback on the line and if I was unable to hear properly, I could not conduct the hearing properly. The landlord argued with me and then said that he removed his telephone from speakerphone. He then exited the conference at 11:02 a.m. and called back in at 11:03 a.m., again using the speakerphone. When I asked him again to remove it from speakerphone he began arguing with me. During the landlord's absence, I did not discuss any evidence with the tenant. From approximately 11:00 a.m. until 11:09 a.m., the landlord was arguing with me and yelling at me because he wanted to use the speakerphone. The landlord then asked for my name, after I had already provided it at the beginning of the hearing, and while I was attempting to provide it for a second time with the correct spelling, he continued to yell at me, so he could not hear what I was saying. I then provided my name and spelling for the third time, after the landlord stopped yelling at me.

I notified the landlord that if he wanted landlord LW to participate in the conference at the same time, then landlord LW could call in from a separate telephone in a different room, in order to minimize the echoing. I also informed him that he could hand the phone to landlord LW when he wanted to testify because I could not take evidence from two landlords talking at the same time in any event. The landlord opted to hand the phone to landlord LW during the hearing so that both landlords could hear each other's evidence and be in the same room.
Throughout the conference, the landlord interrupted me and argued with me. He also interrupted the tenant during his testimony, making rude comments and arguing with the tenant. At least twice during the hearing, the landlord and the tenant began yelling at each other and could not hear me asking them to stop because they were yelling so loudly.

I notified both parties to respect each other and myself and that as the Arbitrator, my role was to conduct the conference and obtain testimony from both parties so that I was able to make a final, binding decision. I notified both parties that only one party could speak at a time and that both parties would be given a chance to speak, present their case and respond to the other party's case.

I cautioned the landlord multiple times to stop interrupting me and the tenant. I repeatedly cautioned him that I would disconnect him from the hearing if he did not stop his interruptions. The landlord continued with his disruptive, rude and inappropriate behaviour. However, I allowed the landlord to attend the full hearing, despite his disruptive and inappropriate behaviour, in order to provide him with a full opportunity to present the landlord's application and respond to the tenants' case.

I caution the landlord to not engage in the same rude, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

I also caution the tenant to not engage in yelling and fighting with the other party at any future hearings at the RTB, as he may be excluded from future hearings and a decision will be made in his absence.

Issues to be Decided

Are the tenants entitled to a return of a portion of their security deposit and the full FOB deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

I note that at least half of the hearing time was spent by both parties arguing over the parking charges and a previous Residential Tenancy Branch ("RTB") decision made in this tenancy. I notified both parties that this application was unrelated to the previous decision and I would not be overturning, varying or discussing the previous RTB decision at this hearing. I notified both parties that there is an internal RTB review procedure as well as a judicial review Supreme Court procedure that could have been followed to deal with the previous decision. Both parties confirmed they had not used these procedures.

Both parties agreed to the following facts. This tenancy began on June 15, 2013 and ended on October 3, 2017. Monthly rent in the amount of $885.00 was payable on the first day of each month. A security deposit of $397.50 and a FOB deposit of $100.00 were paid by the tenants and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy but the tenants did not sign the move-out condition inspection report because they disagreed with parking charges of $210.00. The tenants provided written permission to the landlord to deduct $113.40 for carpet cleaning and $75.00 for drywall damage from their security deposit. The tenants returned the FOB to the landlord after the tenancy ended. The landlord did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant testified that a written forwarding address was provided by way of a note that was given to landlord LW's wife personally on October 3, 2017. The tenant claimed that he had the note in front of him during the hearing but did not provide a copy with the tenants' application.

Landlord LW initially testified that he received a note containing a written forwarding address from the tenants on October 3, 2017. He later changed his testimony to state that he did not receive a written forwarding address, just a notice that the tenants were vacating the rental unit. When I questioned landlord LW about his changing testimony, he stated that he did not have anything from the tenants with a forwarding address.

The tenants seek a return of $209.10, which is a portion of their security deposit of $397.50, minus the $188.40 in deductions. They also seek to recover the $100.00 FOB deposit and the $100.00 application filing fee.

Analysis

Credibility

I found the tenant to be a more credible and forthright witness than landlord LW. The tenant provided consistent testimony in a candid manner, without changing his version of events. He admitted to events that were not helpful to the tenants' case. He agreed that he did not provide a copy of the forwarding address note with the tenants' application. He also admitted that the tenants agreed to deductions to the security deposit.

Conversely, I found that landlord LW changed his testimony throughout the hearing, in order to suit his version of events. Initially, he indicated that he received a forwarding address note from the tenants and confirmed the date of October 3, 2017. Later, he recanted this testimony. When I questioned him about this conflict, he stated that he did not receive a note with a forwarding address, just a note to end the tenancy. He also indicated that the landlord filed an application to keep the security deposit, later changing his testimony to say that he was not sure, and then again changing his testimony to say that it was not filed.

Findings

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on October 3, 2017. The tenants gave the landlord written permission to retain $188.40 from the security deposit. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

I make the following finding based on a balance of probabilities and the testimony of the tenant, which I prefer to landlord LW's testimony, for the above credibility reasons. I find that the tenants provided a written forwarding address to the landlord by way of a note on October 3, 2017, in accordance with section 88 of the *Act*.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17*,* I find that the tenants are entitled to receive double the value of $209.10, which is the security deposit of $397.50 minus $188.40 in deductions that the tenants agreed the landlord could retain, totalling $418.20. Although the tenants did not apply to obtain a return of double the deposit, they did not specifically waive their right to it. Accordingly, I must consider the doubling provision as per Residential Tenancy Policy Guideline 17.

I also find that the tenants are entitled to a return of the $100.00 FOB deposit, as both parties agreed that the tenants returned the FOB to the landlord at the end of the tenancy.

As the tenants were wholly successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $618.20 against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: April 04, 2018

Residential Tenancy Branch