Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AVAUN APARTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFT MNDCT MNSD

Introduction

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

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenant's application and evidence.

At the beginning of the hearing the tenant's witness SL indicated that she was incorrectly named as a respondent in this application. SL testified that she was the tenant's new property manager, and is attending the hearing as a witness. As neither part was opposed, SL's name was removed as a respondent for the tenant's application.

Preliminary Issue – Landlords' Evidence

The landlords did not serve their evidence package until August 31, 2018. The tenant testified that he did not have an opportunity to review this evidence package before the hearing.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was August 29, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that the tenant has testified that he did not have an opportunity to review the landlords' evidence package before the hearing.

As I am not satisfied that the tenant was served with the landlord's evidence within the timelines prescribed by rule 3.15, the landlord's evidence will be excluded for the purposes of this hearing.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the return of his security deposit?

Is the tenant entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

This tenancy began in January 2005. The landlord MS testified that this tenancy ended on December 1, 2017, while the tenant testified that the tenancy ended on November 30, 2017. Monthly rent was set at $550.00. The landlord had collected a security deposit in the amount of $262.50 at the beginning of the tenancy, and still holds that deposit.

The tenant testified that his forwarding address is contained in a letter to the landlords dated December 13, 2017. The letter is from the tenant requesting a move-out inspection in order for the tenant to obtain a report and receive his security deposit back. The tenant provided a copy of the letter in his evidence.

The tenant also requested a monetary order in the amount of $50.00 for electrical work the tenant had performed for the landlord. The tenant included a copy of an invoice in his evidence dated September 25, 2017 in the amount of $87.00, signed by only the tenant. The landlord disputes this application, stating that although the tenant has done work for him, all work is paid for immediately, and there are no outstanding payments.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

During the hearing informed both parties that the tenant's letter dated December 13, 2017 does not meet the requirements of the provision of a forwarding address as set out in section 38 of the *Act*. As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I informed the MS that the landlords had 15 days from the date of the hearing, until September 21, 2018, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it. If the landlords fail to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenant requested a monetary order for work that he had completed for the landlord, but was not paid for. The landlord MS provided conflicting testimony as to what was actually owed by the landlords. As the landlords dispute that they owe the tenant any money, the onus falls on the tenant to establish that the landlords do indeed owe the tenant $50.00. I find that the tenant has not provided sufficient evidence to show that the landlord still owes the tenant the $50.00 the tenant is requesting. On this basis, I dismiss the tenant's application for $50.00 without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in his application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's forwarding address was confirmed during the hearing, and the landlords were informed that he had 15 days from the date of the hearing to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it. If the landlords fail to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

The remaining portion of the tenant's application is dismissed 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: September 10, 2018

Residential Tenancy Branch