Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened on October 11, 2018 in response to an application for dispute resolution made March 15, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
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 Landlord did not attend the hearing that started as scheduled at 1:30 p.m. and that lasted until 1:42 p.m. The only Party who called into the hearing during this time was the Tenant who was ready to proceed. It was confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing to the Applicant. The Tenant requests return of double the combined security and pet deposit and was given full opportunity to be heard, to present evidence and to make submissions on this claim.

Issue(s) to be Decided

Is the Tenant entitled to return of the security and pet deposit despite not having made an application claiming its return?

Is the Tenant entitled to return of double the combined pet and security deposit?

Background and Evidence

The tenancy started on June 1, 2017 and ended on March 3, 2018. Rent of $1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord

collected $800.00 as a security deposit and $800.00 as a pet deposit. The Tenant attended and participated in both a move-in and move-out condition inspection. The Tenant provided its forwarding address to the Landlord on the move-out condition inspection report dated March 3, 2018.

The Landlord's application sets out claims seeking costs for damages to the floors in the amount of $1,000.00 detailed in the application as the Landlord's insurance deductible costs and costs of $1,472.88 for delayed occupancy due to the floor repairs. No supporting evidence for the insurance deductible costs being claimed was provided. There are no details or submissions made in relation to the claim for delayed occupancy such as when and what type of repairs were made and what occupancy would have otherwise occurred. The only evidence provided by the Landlord in advance of the hearing is a copy of the move-in and move-out report indicating damage to the flooring. The extent of this damage is not detailed in the report or in any submissions.

The Tenant states that the Landlord caused the Tenant significant time and funds having ending the tenancy for landlord's use and that the Landlord sold the unit instead of using it as stated on the notice to end tenancy. The Tenant believes that the Landlord has similarly not made its application in good faith. The Tenant seeks return of the security deposit and does not waive any entitlement the Tenant may have to return of double the security deposit.

Analysis

Policy Guideline #17 provides that the a security deposit may be ordered returned to a tenant on a landlord's application to retain all or part of the security deposit returned whether or not the tenant has applied for dispute resolution for its return. Given this policy guideline I find that the Tenant is entitled to consideration of the return of the combined security and pet deposit despite not having made an application claiming its return.

Section 59(2) of the Act provides that an application for dispute resolution must, inter alia, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 62(4) of the Act provides that all or part of an application for dispute resolution may be dismissed if

> (a) there are no reasonable grounds for the application or part,
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> (b) the application or part does not disclose a dispute that may be determined under this Part, or
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> (c) the application or part is frivolous or an abuse of the dispute resolution process.

Black's Law Dictionary defines **Frivolous** "as of little weight or importance" and sets out that a pleading is "frivolous" when it is clearly insufficient on its face, does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. The Landlord provided no detail of the extent of the damage to the flooring and no evidence to support that any repair or replacement was carried out or that the insurance deductible being claimed was actually paid. The Landlord provided no supporting evidence or detail in relation to the lost rental income costs being claimed. The Landlord did not attend the hearing to pursue the claims in the application or to provide evidence of the merit of its claims. Given the lack of detail or supporting evidence for the damages and costs being claimed by the Landlord and considering the Landlord's failure to attend the hearing to pursue the claims I find that there are no reasonable grounds for the application, that the application is of little weight or importance and that the Landlord is presumed to have made the application for the mere purpose of delaying the return of the security and pet deposit to the Tenant. I find therefore that the application is frivolous.

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. Policy

Guideline #17 provides that "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if, inter alia, the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process." Further to the above findings and based on the Tenant's undisputed evidence that the tenancy ended on March 3, 2018 I find that the Landlord had until March 18, 2018 to make an application for dispute resolution or to return the security deposit. Although the Landlord applied within 15 days as required, as the Landlord did not attend the hearing and as the application has been found to be frivolous, I dismiss the application. As the Landlord's application has been dismissed I also find that it may be considered that no application was made at all within the time required. For all the above reasons I find that the Tenant is entitled to return of double the combined security and pet deposit plus zero interest of **$3,200.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$3,200.00**. 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: October 17, 2018

Residential Tenancy Branch