Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P255 ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT
MNDCL, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for money owed;
- Compensation for damage to the rental unit and authority to withhold the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Tenants under the *Act*, seeking:

- Compensation for loss or other money owed;
- Return of double their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, the Tenants' advocate (the "Advocate"), and the agent for the Landlord (the "Agent"), all of who 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 emailed to them at the email address provided in the hearing.

Preliminary Matter

Preliminary Matter #1

The Agent testified that a copy of the Application and the Notice of Hearing were sent to the Tenants on March 15, 2018, by registered mail. With the consent of the parties I logged into the mail service provider's website and verified that the registered mail was sent as described above and received on March 16, 2018. However, the Tenant's disputed receipt of the Application or the Notice of Hearing stating that they only received a copy of the tenancy agreement, some photographs and an invoice from the Landlord and were not even aware that the Landlord had filed an application until April 13, 2018, when they filed their own application with the Residential Tenancy Branch (the "Branch").

When asked to provide details regarding the service of the Application, the Notice of Hearing and the documentary evidence before me from the Landlord in light of the Tenants' testimony, the Agent provided conflicting testimony and then acknowledged that she suffers from some short-term memory loss and does not know what happened with regards to the service of evidence.

The ability to know the case against you and to provide evidence in your defense are fundamental to the dispute resolution process. Further to this, rule 3.5 of the Rules of Procedure states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure.

Although the Agent provided a tracking number for a registered mail package, only one package was sent instead of one package for each Tenant. Further to this, the parties disputed what evidence was contained in this package and the Agent herself provided inconsistent testimony regarding the package contents. Based on the above, I am not satisfied that both Tenants were served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure. As a result, I therefore dismiss the Landlord's claim in its entirety with leave to reapply. This is not an extension of any statutory time period.

Having dismissed the Landlord's claims with leave to reapply, the hearing therefore proceeded based solely on the Tenants' Application.

Preliminary Matter #2

During the Hearing the Tenants sought $35.00 for the cost of work done on another rental unit in the building. All parties agreed that this work is not related to this tenancy and did not arise out of the rights or obligations of either party under the tenancy agreement. Instead, the parties agreed that this work was completed as part of a separate work agreement. The Branch does not have jurisdiction to hear all matters between two or more parties and although the parties have a tenancy relationship, the $35.00 sought by the Tenants is unrelated to the tenancy relationship itself. Instead, this claim appears to be for work completed under a separate work agreement. As a result, I dismiss this claim without leave to reapply for lack of jurisdiction as it is unrelated to the tenancy or the obligations of either party under the *Act.*

Issue(s) to be Decided

Are the Tenants entitled to $1,400.00 for the return of double their security deposit under section 38 of the *Act*?

Are the Tenants entitled to the $363.00 sought for loss or other money owed?

Are the Tenants entitled to recovery of their filing fee?

Background and Evidence

The parties agreed that the one year fixed term tenancy, which commenced on July 28, 2017, was not set to end until June 30, 2018, but actually ended on February 25, 2018, as the Tenants gave notice to end their tenancy early. The parties agreed that rent in the amount of $1,400.00 was due on the first day of each month and that both a $700.00 security deposit and a $150.00 key deposit were paid by the Tenants, which the Landlord still holds.

The parties agreed that the Tenants gave written notice to end their tenancy effective February 28, 2018, but moved out early. As a result, the parties agreed that the tenancy actually ended on February 25, 2018. Although the Agent initially provided some conflicting testimony regarding receipt of the Tenants' forwarding address, ultimately the parties agreed that the Tenants' forwarding address was received by the Agent on February 25, 2018, the date the tenancy ended.

The Tenants argued that the Landlord's Application was not filed on time and therefore they are entitled to $1,400.00 for the return of double their security deposit amount. The Agent stated that as the Tenants' forwarding address was received on February 25, 2018, and the Landlord's Application seeking to retain the Tenants' security deposit was filed on March 9, 2018, she believes the Application was filed on time and therefore the Tenants are not entitled to the return of double their security deposit.

Although the parties agreed that the Tenants returned all keys and means of access to the building and rental unit at the end of the tenancy, the Agent stated that the Tenants' $150.00 key deposit was retained as part of the Landlord's claim. The Tenants stated that as they returned the keys for which this deposit was collected, they are entitled to the return of this deposit.

The Tenants also sought four days rent in the amount of $213.00 for the period of February 25, 2018 – February 28, 2018, as they stated that they were required by the Landlord to move out earlier than February 28, 2018. They did not submit any documentary or other evidence in support of this claim. In contrast the Agent stated that although the Tenants were not required to move-out early, the option to move-out early was suggested to them in order to mitigate their potential loss from ending their fixed-term tenancy early as the rental unit was in such a state that it was difficult to show and unlikely to re-rent for March 1, 2018. The Agent stated that this option was suggested to help get the unit ready for quick re-rental, thereby reducing any potential loss of rent the Tenants might be responsible for.

Analysis

In the hearing the parties agreed that the one year fixed term tenancy was not set to end until June 30, 2018, and section 45 of the *Act* states that a tenant may not end a fixed-term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. Although the Tenants testified that they were forced to move out of their rental unit four days early, they did not provide any documentary or other evidence to corroborate this testimony and the Agent testified that the Tenants voluntarily vacated the rental unit early in order to reduce the risk that they would owe additional money for the loss of next month's rent. 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. As the parties provided conflicting testimony regarding why the tenancy ended earlier than the date specified by the Tenants in their notice to end tenancy and given the lack of documentary or other

evidence to corroborate the Tenants' testimony that they were forced by the Landlord to vacate early, I find that the Tenants have failed to satisfy me, on a balance of probabilities, that the Landlord forced them to vacate the rental unit early. As a result, I therefore dismiss their claim for $213.00 in rent without leave to reapply.

Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends or the date the tenant's forwarding address is received in writing, the landlord must 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.

As the parties agreed in the hearing that the forwarding address was provided on February 25, 2018, the same date that the tenancy ended, I find that the Landlord therefore had until March 12, 2018, to either return the Tenants their security deposit or file a claim against it. As the Landlord's Application was filed on March 9, 2018, seeking to retain the Tenants' security deposit, I therefore find that the Landlord complied with section 38(1) of the *Act* and the Tenants are therefore not entitled to the return of double their security deposit. However; as the Landlord's claim has been dismissed with leave to reapply, I order that the Landlord return the $700.00 security deposit to the Tenants. As the parties also agreed that the keys for which the $150.00 key deposit was paid have been returned, I also order that the Landlord return the $150.00 key deposit to the Tenants.

Further to the above, as the Tenants were successful in only a portion their claims, I therefore grant them recovery of only half of the $100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Tenants are therefore entitled to a Monetary Order in the amount of $900.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of $900.00. The Tenants are provided with this 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.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not

lose authority in a dispute resolution proceeding, not is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 29, 2018

Residential Tenancy Branch