Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord and tenant L.H. (the "tenant") 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 landlord testified that he served the notice of dispute resolution package by registered mail in July of 2018. The tenant testified that he received the notice of dispute resolution package within the required time frame but could not recall on what date in July 2018 he received it. I find that the tenants were served with this package in accordance with section 89 of the *Act.*

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This fixed term tenancy began in September of 2017 and was originally set to end on July 31, 2018. Monthly rent in the amount of $2,000.00 was payable on the first day of each month. A security deposit of $2,000.00 was paid by the tenants to the landlord. A move in condition inspection report was not completed. The landlord did not provide the tenants with two opportunities to complete the move in inspection report. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. In a letter dated April 17, 2018 the tenant provided the landlord with notice to end the tenancy on June 15, 2018. A new tenant was found and moved in on June 20, 2018. The tenant provided the keys to the new tenant because the landlord was out of town. The landlord received the tenants' forwarding address via an e-mail on June 27, 2018. The tenants requested that $1000.00 of their security deposit be applied to June 2018's rent, the landlord agreed.

The tenant testified that they had fully moved out on June 15, 2018 but that they returned to the property to clean the yard on June 16, 2018 at which time the sliding glass door was intact. The tenant testified that his wife, tenant M.P. returned to the property to check on it on either June 18-19, 2018 and at this time noticed that the sliding glass door had shattered. The tenant testified that he does not know how the sliding glass door shattered.

The landlord is seeking compensation for the repair of the door in the amount of $448.35. A receipt in the same amount was entered into evidence.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the landlord has failed to prove, on a balance of probabilities, that the tenants caused, through action or neglect, the door to be shattered. The landlord has not proved that the tenants breached a section of the *Act*. Since the landlord has not established that the tenants are responsible for the broken door, when the door was broken, is not relevant. I dismiss the landlord's monetary claim without leave to reapply.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlord admitted that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. The landlord also testified that he did not provide the tenants with two opportunities to complete the move in inspection with the last opportunity provided in writing. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Security Deposit Doubling Provision

While the provision of the tenants' forwarding address to the landlord via e-mail does not meet the service requirements of section 88 of the Act, I find that, pursuant to section 71 of the Act, the landlord was sufficiently served for the purposes of the Act on June 27, 2018 as the landlord acknowledged receipt on that date.

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)).

Section C(3) of Policy Guideline 17 states that unless the tenants have 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 the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act.* Therefore, the tenants are entitled to receive double their security deposit as per the below calculation:

> $2,000.00 (security deposit) – $1,000.00 (amount tenant authorized the landlord to deduct) * 2 (doubling provision) = $2,000.00

I find that since the landlord was not successful in this application, he is not entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the landlord's application.

I issue a Monetary Order to the tenants in the amount of $2,000.00.

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.

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: November 20, 2018

Residential Tenancy Branch