Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing involved cross applications made by the parties. On June 15, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to retain the security deposit and pet damage deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 1, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

On October 30, 2018 and November 2, 2018, the Tenant amended her Application to increase the amount of monetary compensation she was seeking.

Both the Landlord and the Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Canada Post employee could not provide the Tenant's address; however, a package could be placed in the Tenant's PO box. The Landlord stated that the Notice of Hearing package was placed in the Tenant's PO box on June 28, 2018 and the Tenant confirmed that she received this package. While service of this package does not comply with Sections 89 or 90 of the *Act*, based on this undisputed testimony, I am satisfied that the Tenant received the Notice of Hearing package.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail and the Landlord confirmed receipt of this package. Based on this

undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant also advised that she served the amendments to the Landlord and the Landlord confirmed receipt of this package. Based on this undisputed testimony, I am satisfied that the Landlord was served with the amendments.

The Landlord submitted that her evidence was served to the Tenant by Xpresspost on November 15, 2018. The Tenant acknowledged that she received this package yesterday; however, she confirmed that she had reviewed the Landlord's evidence and was prepared to respond to it. While the service date of the Landlord's evidence did not comply with the requirements of Rule 3.14 of the Rules of Procedure, as the Tenant was prepared to respond, I am satisfied that it would be appropriate to accept and consider the Landlord's evidence when rendering this decision.

The Tenant submitted that she served the Landlord her evidence by registered mail on November 3, 2018 and the Landlord also confirmed receipt of this package. As this evidence was served in accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord was sufficiently served with the Tenant's evidence.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's compensation for monetary compensation with respect to the end of tenancy and the security and pet damage deposit. The other claims made by the Tenant were dismissed; however, she is at liberty to apply for any other claims under a new and separate Application.

In addition, as part of the Landlord's claim, she was seeking compensation for personal property that she alleged the Tenant stole from a cabin that was on the property but was not included in the tenancy agreement. During the hearing, the Landlord was advised that the *Act* does not have jurisdiction over this matter and she stated that she had already pursued this through the RCMP.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on May 1, 2017 and that the tenancy ended when the Tenant vacated the rental unit in the first week of October 2018. Rent was established at $900.00 per month, due on the first of each month. A security deposit of $450.00 and a pet damage deposit of $450.00 were also paid.

Both parties agreed that a forwarding address in writing was never provided to the Landlord.

In addition, the Landlord advised that she did not detail her specific requests for monetary compensation in some form of a monetary order worksheet nor did she provide evidence to corroborate those specific amounts. Furthermore, the Tenant advised that it was not clear to her what the Landlord was seeking compensation for nor were the amounts of compensation outlined specifically in the Landlord's evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an

Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the Act, if the Tenant wants the security deposit returned, she must provide a forwarding address in writing to the Landlord first. As the Tenant had never provided the Landlord with her forwarding address in writing, I do not find that the Tenant's address on her own Application meets the requirements of a separate written notice. The Landlord is put on notice that she now has the forwarding address and she must deal with the security deposit and pet damage deposit pursuant to Section 38. The Landlord is deemed to have received the decision 5 days after the date it was written and will have 15 days from that date to deal with the deposits.

If the Landlord does not deal with the security deposit and pet damage deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received the decision, the Tenant can then re-apply for double, pursuant to the *Act*.

Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. During the hearing, the Landlord was asked to specifically outline her requests for monetary compensation totaling the $7,862.70 that she was seeking. However, she was unable to provide details summarizing her claims for this amount. Furthermore, the Tenant did not know what the Landlord was specifically claiming for and did not sufficiently know the case against her.

Consequently, I do not find that the Landlord has made it abundantly clear to any party that she is certain of the exact amounts she believes is owed by the Tenant. As I am not satisfied that the Landlord outlined her claims precisely, with clarity, I do not find that the Landlord has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. In addition, Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For the reasons above, I dismiss the Landlord's Application with leave to reapply.

As the Landlord was unsuccessful in her application, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the Landlord's Application and the Tenant's Application for Dispute Resolution with 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: November 26, 2018

Residential Tenancy Branch