Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on June 28, 2018. The tenant seeks compensation for half a month's worth of rent promised to be deducted by the landlord but not, pursuant to section 67 of the Act, and compensation for recovery of the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on December 6, 2018 and the tenant and the landlords attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties did not raise any issues of service except for a rather odd method of the landlords presumably serving evidence by allegedly breaking into the tenant's mailbox and putting the evidence package therein. (The landlords did not respond to or say anything regarding this statement.) That having been said, I find that the parties' evidence was served pursuant to the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, *only* evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to compensation pursuant to section 67 of the Act?
2. Is the tenant entitled to compensation pursuant to section 72 of the Act?

Background and Evidence

The tenant testified that in May 2018 he was on the hunt for a new place to live and had sent several emails to prospective landlords. The landlords in this case responded to him and asked if he was still interested. He said that he was.

While the rental unit, a condo, was available for rent starting July 1, 2018, the landlord (H.M.) told the tenant that he could move in at any time before July 1. She further told the tenant that he would not have to pay any rent until July 1, even if he did move in before then. June 15, 2018, was the agreed upon move-in date, and the amount of rent that the tenant would save amounted to $995.00, or, half the monthly rent of $1,990.00.

Submitted into evidence is a copy of a text dated June 3, 2018, in which the landlord states to the tenant:

> Yeah but you can also move in anytime this month, the tenants have already moved out.
>
> But you would have to pay until the month of July.
>
> Wouldn't*

On June 5, 2018, the tenant viewed the condo and gave his application package to the landlord and confirmed that he would like to move in on June 15. In the week that followed, there were unsuccessful attempts by the parties to meet and sign the tenancy agreement. The tenant reiterated with the landlord their understanding about the half month's rent deduction, and at that point "everything was great." A written tenancy agreement was entered into between the parties, the terms of which were the tenancy would commence on June 15, 2018 and end on June 30, 2019, with monthly rent of $1,990.00. The tenant paid a security deposit of $995.00. He further stated that the keys were handed over on the 14th of June and that he moved in on the 15th of June.

A couple of days later, the tenant contacted the landlord by text, reminding her about the $995.00. There was no response from the landlord, but then the tenant received a phone call from the landlord's mother (the other landlord, V.M.) who said, "you're not going to hold her to this, are you?"
On June 20, 2018, the landlord (V.M.) emailed the tenant back in response to a phone conversation they had the previous evening. An excerpt of that email reads as follows:

> You wrote: "I was promised the balance of this month at no charge."
>
> You may have had prior conversation with my daughter [name] but on June 14th we met at the unit at 10:20AM and went over all the documents and agreement before you and signed the papers. I asked for a damage deposit and half of the current months rent (June 15th-30th) you did not raise any concerns and paid both in cash and got a receipt for it.

It was at this point that the tenant said there was no more discussion to be had and he filed for dispute resolution shortly after, on June 28, 2018.

The landlord (H.M.) testified that prior to the parties signing the lease she did agree to the $995.00 deduction, but that due to unforeseen circumstances (involving a previous tenant's moving out) the tenant would have to end of having to pay the half month's worth of rent. The landlord further testified that "we told him that he *would* have to pay half a month's rent." She presented and submitted into evidence a copy of "Deposit Receipt" which notes that $995.00 was received on June 14, 2018 as a deposit for the rental unit (it is not clear whether this is the security deposit). Also, on that document is the statement, part of which is typed and part of which is hand printed:

> "Upon move-in or on the 1st of the month, whichever is sooner, the following amounts are due and payable: $1,990.00 as the first month's rent. + ½ months rent ($995) for moving in 15 days prior to the 1st of the month."

The landlord further submitted that had this change of circumstance been an issue, then why would the tenant raise it as an issue four days later (on June 19) after the tenancy agreement was signed. The parties submitted into evidence a copy of the tenancy agreement.

The other landlord (V.M.) submitted that the tenant signed all the paperwork, and that if the tenant had an issue then why not raise it at the time of signing. She further explained and acknowledged that while the landlord did go back on her word, this was done before the parties signed the tenancy agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that 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. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?

3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

In this case, while there were discussions about the rent being free for June 15 to June 30, 2018, the parties nevertheless entered into a written contract on June 14, 2018. The terms as stated in the written tenancy agreement were that the tenancy would commenced on June 15, 2018. In addition, the tenant agreed to pay rent for the period of June 15 to June 30 as evidenced by the Deposit Receipt. This receipt was dated and provided to the tenant on June 14, 2018.

Ultimately, while it is unfortunate and rather disingenuous that the landlords ended up reneging on their offer of two weeks' free rent, the tenant presents as a sophisticated and intelligent individual who (without any evidence to the contrary) had full capacity to review, agree, and enter into the tenancy agreement at the time of signing. The terms of that agreement were clarified by the Deposit Receipt. Had the tenant not been prepared to execute the tenancy agreement along with the agreement to pay for half the months' rent, he had the capacity and capability to refuse. He did not.
I note that the parties' testimony diverges leading up to and including the events that occurred on June 14, 2018. Namely, the tenant testified that the landlord conveyed to him that the $995.00 free rent deal was on, while the landlord testified that she was very clear, "adamant" was the word used, that there was no longer that deal.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has been unable to provide any additional evidence establishing that the landlord said that the deal was on. While the tenant may very well have thought and assumed the deal was going through leading up to the moment of signing the tenancy agreement, the fact that at the moment of signing (and receiving a receipt on which 2 weeks of rent for June was payable) the evidence demonstrates that the deal was no longer on the table.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of establishing that the landlords failed to comply with the Act, the regulations, or the tenancy agreement. As such, I will not consider the remaining three factors in the above-noted test for determining compensation and therefore dismiss the tenant's application without leave to reapply.

As the tenant was unsuccessful in his application, I do not award compensation for recovery of the filing fee.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: December 7, 2018

Residential Tenancy Branch