Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On August 14, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking a return of their security deposit and pet damage deposit pursuant to Section 38 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and A.F. attended the hearing as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on August 20, 2018 and A.F. confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord by registered mail on November 29, 2018 as she had been bedridden with vertigo for three months. A.F. confirmed that the Landlord received this evidence on December 4, 2018; however, he stated that service of this evidence did not comply with the time frame requirements for service under Rule 3.14 of the Rules of Procedure and that the Landlord did not have adequate time to review and prepare a response to it. As such, I have not accepted or considered the Tenants' evidence when rendering this decision. However, the Tenant was allowed to provide testimony with respect to this evidence during the hearing.

A.F. advised that the Landlord's evidence was served to the Tenants by registered mail on December 10, 2018 and by process server on December 11, 2018, and this was done so late only because of when the Landlord received the Tenants' evidence. The Tenant confirmed that she received this on December 12, 2018. As service of this evidence did not comply with the time frame requirements for service under Rule 3.15 of the Rules of Procedure, I have not

accepted or considered the Landlord's evidence when rendering this decision. However, A.F. was allowed to provide testimony with respect to this evidence during the hearing.

All parties 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.

Issue(s) to be Decided

- Are the Tenants entitled to a return of the security deposit and pet damage?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants 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.

All parties agreed that the tenancy started on June 17, 2012 and ended when the Tenants vacated the rental unit on August 31, 2016. Rent was established at $1,250.00 per month, due on the first of each month. A security deposit of $625.00 and a pet damage deposit of $625.00 were paid.

The Tenant advised that she did not provide a forwarding address in writing to the Landlord at any time. She stated that she did not have one after vacating the rental unit and that there was no need to as she had arranged to meet the Landlord at a motel at a later date. A.F. advised that it was his belief that the Landlord was not provided with a forwarding address in writing.

In addition to the request for the return of the security deposit and pet damage deposit, the Tenants' Application outlined a request for monetary compensation in the amount of $1,200.00 as they allege that the rental unit was shown improperly by the realtor. She advised that the realtor contacted them on a daily basis to show the rental unit; however, the realtor only showed the unit once between April and June 2016. She stated that the realtor did not appear for the showing, nor did anyone else, and that they were blamed for not being at the rental unit to provide access. The Tenant submitted that it was her belief that the realtor sent in two strangers off the street, without keys, and instructed them to enter the rental unit whether the Tenants were home or not, and she believes the realtor did this multiple times. She also made reference to the emails that she submitted as evidence.

A.F. refuted that the realtor contacted the Tenants daily and confirmed that the realtor requested if specific times or dates would be convenient. He also advised that the realtor calling the

Tenants is not unreasonable or an interference. He agreed that the rental unit was only showed one time; however, it is not clear to him why the Tenants are seeking 28 days worth of compensation for this. He stated that the emails that the Tenant referred to are contradictory and are simply complaints after the fact. He also stated that once a showing has been scheduled, it is beyond anyone's control if no one shows up. A.F. advised that the realtor emailed the Tenants to confirm that specific times or dates would be appropriate to show the rental unit and that she was flexible in working with the Tenants.

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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.
Section 39 of the *Act* states that if the Tenants do not provide a forwarding address in writing within one year after the end of the tenancy, the Tenants extinguish their right to a return of those deposits and the Landlord may retain those deposits.

Section 29 of the *Act* allows a Landlord to enter a rental unit as long as the Tenants have been given written notice at least 24 hours and not more than 30 days before the entry. This notice must indicate a reasonable purpose for entering and it should also indicate the date and the time of the entry, which must be between 8 AM and 9 PM.

Section 67 of the *Act* allows for an arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
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> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable

> disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
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> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
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> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

With respect to the Tenants' claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."
Pursuant to Section 38 of the *Act*, if the Tenants want the security deposit and pet damage deposit returned, they must provide a forwarding address in writing to the Landlord first. The undisputed evidence is that the Tenants had not provided the Landlord with their forwarding address in writing. As the tenancy ended on August 31, 2016 and as a forwarding address in writing was not provided within a year of the tenancy ending, I am satisfied that the Tenants extinguished their right to make this claim for the return of the deposits and that the Landlord was entitled to keep them. Consequently, I dismiss this portion of the Tenants' claim in its entirety.

Regarding the Tenants' claims for compensation, the burden of proof is on the party making the Application to establish their claims. Based on the limited evidence before me, I am not satisfied that the Tenants substantiated that they were contacted daily by the realtor, nor am I satisfied that the Tenants were not provided with the proper written notice for each showing that the realtor scheduled. Furthermore, while it is the Tenants' belief that they needed to be present every time the realtor organized a showing of the rental unit, there are no provisions in the *Act* which required them to remain in the rental unit for a showing of the rental unit to be conducted. As such, I am not satisfied by the evidence presented that the Tenants have established that there was a substantial interference with the ordinary and lawful enjoyment of the premises. At most, this has been a temporary discomfort or inconvenience, which was primarily created by themselves as they desired to be present every time a showing was scheduled. Thus, I do not find that this constitutes a basis for a breach of the entitlement to quiet enjoyment.

Ultimately, I do not find that the Tenants have met the burden of proving their case that the loss that they have claimed to have suffered is equivalent to the amount of $1,200.00 they are seeking. As such, I dismiss this claim in its entirety.

As the Tenants were unsuccessful in their claims, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Based on my findings above, I dismiss the Tenants' Application in its entirety.

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: January 3, 2018

Residential Tenancy Branch