Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 29, 2018 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed, the return of the security deposit and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed she was not seeking double the security deposit back and was only seeking the original amount of the security deposit back.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed she received the hearing package. She said she did not receive any evidence from the Tenant.

The Tenant testified that she sent the evidence package to the Landlord by express post on December 6, 2018. The Tenant testified in relation to the address the package was sent to and the Landlord confirmed this is her address. The Tenant provided Tracking Number 1 as noted on the front page of this decision. I looked this up on the Canada Post website which shows a notice card was left December 10, 2018 and December 18, 2018 in relation to the package. The Landlord testified that she never received these notice cards.

I raised the issue of the timing of service of this evidence. I told the parties I would make a decision about service in my written decision. I heard from the parties on whether the evidence should be admitted or excluded in the circumstances. The Tenant submitted that she did everything she could in relation to getting the evidence to the Landlord in time.

I disagree with the Tenant's position. The evidence submitted was all in existence well before the hearing date. The Application was made August 29, 2018. The hearing package was sent to the Landlord August 29, 2018. A copy of the evidence should have been sent to the Landlord with the hearing package. Rule 3.14 of the Rules of Procedure (the "Rules") states that a respondent must receive the applicant's evidence "not less than 14 days before the hearing". In the definition of "days" in the Rules it states:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

Here, the Tenant sent the evidence on December 6, 2018. This was the very last day the Tenant could have sent the evidence and complied with rule 3.14. The evidence would have had to be received by the Landlord the same day it was sent in order to comply with rule 3.14. It is not reasonable that the Tenant would expect the package to be delivered the same day when there has been a postal strike and it is well known that there is a backlog. I note that the Canada Post website indicates that delivery of this package may be delayed due to the labour disruption. I also note that the first notice card was left for the Landlord on December 10, 2018, just 10 days before the hearing. In the circumstances, I find the evidence was not served in accordance with the Rules and I exclude it.

The Tenant advised that she did not receive the Landlord's evidence. The Landlord advised that she did not serve her evidence on the Tenant. I excluded the Landlord's evidence given it was not served in accordance with rule 3.15 of the Rules.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to the return of the security deposit?

2. Is the Tenant entitled to compensation for monetary loss or other money owed?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started September 1, 2016 and

was for a fixed term of six months and then became a month-to-month tenancy. The rent at the end of the tenancy was $3,224.00 due on the first day of each month. The Tenant paid a $1,550.00 security deposit.

The parties agreed the Tenant vacated the rental unit July 31, 2018. The Landlord confirmed she still holds the security deposit.

The Tenant testified that she provided her forwarding address to the Landlord in writing in July. The Landlord disputed this.

The Landlord testified that the Tenant emailed her the forwarding address on August 16, 2018 and sent it by text August 18, 2018. The Tenant maintained that she provided the forwarding address in July but agreed that she also provided it August 16, 2018 by email and August 18, 2018 by text.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The Tenant testified that an informal move-in inspection was done but no formal inspection and no report was completed. The Landlord testified that she and the Tenant did a formal move-in inspection. She said she believed she completed a report but was not sure. The Landlord testified that if she did a report, she would have given a copy of it to the Tenant. The Tenant denied that a report was done. The Tenant said she never received a move-in inspection report.

The Tenant testified that the Landlord did a move-out inspection without her. She said the Landlord would not allow her to participate in the move-out inspection. The Landlord testified that the Tenant chose not to participate in the move-out inspection. The Landlord confirmed she did an inspection without the Tenant. The Landlord said she did not provide the Tenant with two opportunities to do the move-out inspection and did not provide the last opportunity on the approved form. Both parties agreed that no move-out inspection report was completed.

The Tenant sought the following compensation:

1. $600.00 for rent reduction
2. $101.50 for past utilities bills

The Tenant testified that, during the tenancy, there was road work near the rental unit that was disruptive. She said she asked the Landlord to reduce the rent because of the noise and disruption. The Tenant testified that the Landlord agreed to reduce the rent from $3,100.00 to $2,900.00. She said the Landlord cashed her cheques for the $2,900.00 for six months without

issue. The Tenant testified that she provided the Landlord with an invoice for approximately $900.00 during the tenancy. She explained that this was the portion of the utilities bills the Landlord was supposed to pay. The Tenant said the Landlord withheld $600.00 from the amount requested on the basis that the Tenant owed the Landlord $600.00. The Tenant said she did not owe the Landlord this amount because the Landlord had agreed to the rent reduction. The Tenant testified that this agreement occurred just prior to November of 2017.

The Landlord agreed that she allowed for a rent reduction from $3,100.00 to $2,900.00 for six months due to the road work. She also agreed she withheld $600.00 of what was owed to the Tenant for utilities. She said this was not based on the period when the rent was reduced for the road work noise. She said that the Tenant only paid $3,000.00 in rent for the first six months of the tenancy when rent was $3,100.00. She said this is the reason she deducted the $600.00 from what was owing to the Tenant. The Landlord testified that the Tenant kept saying she would pay the difference for the first six months of the tenancy later. She said it was agreed that she would deduct this amount from the hydro bill.

The Tenant agreed that rent at the start of the tenancy was $3,100.00. She also agreed that she provided the Landlord with cheques for $3,000.00. She said she did this because she thought the rent was $3,000.00. The Tenant testified that she told the Landlord she would re-issue the cheques in the correct amount if the Landlord wanted and the Landlord said not to worry about it and agreed to the $3,000.00. The Tenant said the evidence of this agreement was that the Landlord cashed the cheques for $3,000.00 and did not complain about the cheques. She said this was a verbal agreement between her and the Landlord.

In reply, the Landlord denied that she agreed to the rent reduction from $3,100.00 to $3,000.00 for the first six months of the tenancy.

In relation to the $101.50, the Tenant testified that this is the portion of the utilities bills the Landlord still owes her for. She said the agreement was that the Landlord would pay one-third of the utilities bills. The Tenant testified that she had pre-paid and then vacated the rental unit and so the Landlord owed her for the utilities. The Tenant testified that she provided the Landlord with the bills as evidence on this hearing but not otherwise. The Tenant testified that the Landlord told her she does not need the bills.

The Landlord acknowledged that the agreement was that she would pay one-third of the utilities bills. She said the Tenant never gave her the bills and would just write the amount owed on a piece of paper. The Landlord said she does not know if the amount requested is correct because she has never seen the bills. The Landlord said she believes the amount requested is too high.

There is no admissible evidence before me from either party.

Analysis

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the security deposit for damage to the unit under section 38(1) of the *Act* if they have extinguished their right to claim against the security deposit under either section 24 or 36 of the *Act*.

Given the testimony of the parties, I find that this is not a situation where the Tenant was offered opportunities to do a move-in inspection and failed to participate in the inspection. Therefore, I find the Tenant did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

The parties gave differing versions of what occurred in relation to the move-out inspection. However, the Landlord acknowledged she did not provide the Tenant with two opportunities to do the move-out inspection and did not provide the last opportunity on the approved form. Therefore, I find the Tenant did not extinguish her rights in relation to the security deposit under section 36 of the *Act*.

Based on the testimony of the parties, I accept that the Landlord received the Tenant's forwarding address by email on August 16, 2018 and text on August 18, 2018. I find the email and text format sufficient given the Landlord received them. I find August 16, 2018 to be the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from August 16, 2018 to repay the security deposit or claim against the security deposit.

Based on the testimony of the parties, I find the Landlord did not repay the security deposit or claim against it as required. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, and my finding above in relation to section 24 and 36 of the *Act*, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and would have been required to return double the security deposit to the Tenant pursuant to section 38(6)

of the *Act*. However, the Tenant waived her right to double the security deposit and therefore the Landlord must only return the original amount of $1,550.00. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

In relation to the Tenant's request for $600.00 based on a rent reduction, there was no issue that the Landlord withheld $600.00 owing to the Tenant. The Landlord acknowledged doing this. At first, the Tenant thought this related to a period of time when there was a disturbance and the Landlord agreed to a rent reduction. The Landlord advised that this was not the reason she withheld the $600.00 and that she did so because the Tenant failed to pay $100.00 of the total rent amount for the first six months of the tenancy. The Tenant acknowledged that the rent at the start of the tenancy was $3,100.00 and that she only paid $3,000.00. She said the Landlord agreed to this which is shown by the Landlord cashing the cheques for the lesser amount. The Landlord denied that she agreed to this and stated that it was understood she would deduct the amount from what she owed the Tenant for utilities.

Pursuant to rule 6.6 of the Rules, it is the Tenant who has the onus to prove the claim. I am not satisfied that the Tenant has shown she is entitled to the $600.00 requested. The parties disagreed about whether there was an agreement that rent would be reduced by $100.00 for the first six months of the tenancy. The Tenant submitted that the Landlord cashing the cheques is evidence of the agreement. I do not accept this as the Landlord's position is that the agreement was she would deduct the difference at a later time and therefore cashing the cheques does not support the Tenant's position. There is no admissible evidence before me supporting the position of the Tenant. I am not satisfied that the Landlord agreed to a rent reduction at the start of the tenancy. Nor am I satisfied that the Landlord owes the Tenant $600.00 in the circumstances.

In relation to the Tenant's request for $101.50 for past utility bills, I am not satisfied that the Tenant is entitled to this amount. The parties did not agree on what amount the Landlord owes the Tenant for utilities. There is no admissible evidence before me on this issue. I therefore am not satisfied that the Landlord owes the Tenant $101.50 for utilities and decline to order the compensation sought.

As the Tenant was partially successful in this application, I grant her reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of $1,650.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of $1,650.00. and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as

possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: January 09, 2019

Residential Tenancy Branch