Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S (Landlord)
FFT, MNSD (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application September 10, 2018 (the "Tenant's Application"). The Tenant applied for return of double the security deposit and reimbursement for the filing fee.

The Landlord filed the application September 14, 2018 (the "Landlord's Application"). The Landlord applied for compensation for damage to the unit, for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Tenant appeared at the hearing with a friend to assist given a language barrier. The Landlord appeared at the hearing with her husband who also owns the rental unit.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

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 and evidence for the Tenant's Application. There was an issue in relation to what had been received; however, it was confirmed the Landlord was fine with what was received.

The Tenant confirmed she received the hearing package for the Landlord's Application. The Tenant said she only received some of the Landlord's evidence.

The Landlord confirmed she did not serve the Monetary Order Worksheet, bills or receipts submitted on the Tenant. The Landlord acknowledged the Tenant would not have known the amounts of compensation requested from the evidence and documents served on the Tenant.

The Tenant advised she was not prepared to address the compensation sought by the Landlord in the absence of the Monetary Order Worksheet, bills and receipts indicating the amounts being requested.

Section 59 of the *Residential Tenancy Act* (the "*Act*") states:

> (2) An application for dispute resolution must
>
> …
>
> (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings…
>
> [emphasis added]

Further, the Rules of Procedure (the "Rules") require parties to serve their evidence on the other party prior to the hearing.

I find that both the *Act* and Rules are meant to ensure the parties know what is being sought and what evidence is being relied on so that they can properly prepare to respond.

The Landlord did not serve the Monetary Order Worksheet, bills or receipts on the Tenant. Without these, the Tenant did not know what amounts the Landlord was seeking for compensation at the hearing. I am not satisfied the Landlord complied with the requirement to provide full particulars given the Landlord did not provide the Tenant with the documents noted. Further, the Landlord did not comply with the Rules in relation to service of evidence on the Tenant.

In the circumstances, I dismissed the Landlord's request for compensation for damage to the rental unit with leave to re-apply. This does not extend any time limits set out in the *Act*.

I did hear the Landlord's request for compensation for monetary loss or other money owed as the Landlord's Application states she is seeking $5,500.00 as compensation for one month rent due to damages to the property by the Tenant. I found this to be sufficiently clear to consider.

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

Issues to be Decided

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

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

3. Is the Landlord entitled to compensation for monetary loss or other money owed?

4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started May 1, 2016 and was for a fixed term ending April 30, 2017. Rent was originally $5,250.00 per month. The Tenant testified that rent was $5,445.00 at the end of the tenancy. Both parties agreed rent was due on the first of each month. The Tenant paid a $5,250.00 security deposit. There was an addendum attached; however, this was not submitted.

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

The Tenant testified that she provided the Landlord with her forwarding address by email and registered mail. She said the email was sent June 21, 2018. The Landlord acknowledged receiving this email. The co-landlord testified it was received June 22, 2018. The co-landlord submitted that the Landlord could not use this forwarding address without confirming it given when it was sent. He said they tried to confirm the address with the Tenant but that she never responded.

I understood the Landlord to submit that she could not return the security deposit until the damage to the rental unit was discussed with the Tenant and that the Tenant did not respond when the caretaker tried to reach her about the damage.

The Landlord confirmed she did not have an outstanding monetary order against the Tenant at the end of the tenancy. The co-landlord confirmed 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 and co-landlord testified that they showed the Tenant around the rental unit at the outset and that the rental unit was brand new. The Landlord advised that no Condition Inspection Report was completed. The Tenant agreed the Landlord showed her around but did not do a Condition Inspection Report.

The Landlord testified that the caretaker and Tenant did a move-out inspection but that no Condition Inspection Report was completed. The Tenant testified that an inspection was done July 29, 2018 and agreed no report was done.

In relation to the Landlord's request for compensation, the Landlord testified as follows. The Tenant moved out and left the rental unit damaged. The walls had to be patched and painted. The entire rental unit had to be re-painted so that it matched. The rental unit had to be cleaned. Gardening had to be done. The toilet roll hanger had to be replaced. Light bulbs had to be changed. She was not able to re-rent the unit given the damage. She lost one month of tenants and rent.

The Landlord testified that the work on the rental unit had to wait until she got back in September as she was out of the country. She said the caretaker was not willing to assist and the necessary arrangements could not be made while she was away.

The Landlord testified that the rental unit had not been re-rented at the time of the hearing. The Landlord said she did not try to re-rent the rental unit upon the Tenant vacating. She said she wanted to give the next tenants a "perfect" house. The Landlord confirmed the Tenant provided one month notice in relation to ending the tenancy.

The Tenant testified as follows. She provided the Landlord notice to end the tenancy on June 21, 2018. The caretaker who did the inspection said everything was fine. She hired a professional cleaning company to clean the rental unit.

The Tenant disputed that she damaged the rental unit as alleged by the Landlord. In relation to the photos submitted, the Tenant said she was not sure about them as she had moved out of the house. She said she does not know when the pictures were taken.

In relation to the photos, the Landlord testified that nobody had moved into the house after the Tenant vacated. She said nobody else went into the house.

Analysis

Section 7 of the *Act* states:

> (1) If a…tenant does not comply with this Act…or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance…must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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:
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> - 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Both parties agreed the Landlord showed the Tenant around the rental unit at the start of the tenancy. Given this, I find the Tenant did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

Both parties agreed the Tenant and caretaker did a move-out inspection. Given this, I find the Tenant did not extinguish her rights in relation to the security deposit under section 36 of the *Act*.

There was no issue the Tenant vacated the rental unit July 31, 2018. The Landlord acknowledged receiving an email from the Tenant on June 22, 2018 with a forwarding address provided. I find the method of providing the forwarding address sufficient in this case because the Landlord received the email. I note that the Landlord said the Tenant did not provide a forwarding address in the written material submitted. I do not accept this given the Landlord acknowledged receiving the relevant email. I find the Landlord received the Tenant's forwarding address on June 22, 2018, prior to the end of the tenancy. Therefore, July 31, 2018 is the relevant date for the purposes of section 38 of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of July 31, 2018.

I note that the co-landlord submitted that someone needed to confirm the forwarding address provided before acting in relation to the security deposit. I do not agree. When a tenant provides a forwarding address, a landlord is to accept that as the address and act accordingly under section 38 of the *Act*. It is not open to the landlord to question that address or decide to confirm that address and therefore fail to comply with section 38 of the *Act*. The Tenant provided the forwarding address. There is no evidence she suggested that address had changed. The Landlord was required to accept that as the Tenant's forwarding address and comply with section 38 of the *Act*.

I also note that the Landlord submitted that nothing could be done with the security deposit until the damages to the rental unit were discussed with the Tenant. This is not in compliance with the *Act*. Section 38(1) of the *Act* is clear about the obligations of the Landlord. The Landlord was to return the security deposit or claim against it within 15 days of the end of the tenancy. If the Landlord felt there was damage to the rental unit, she should have applied to the RTB within that 15 days to keep the security deposit.

There is no issue that the Landlord did not return the security deposit as she confirmed she held the entire deposit at the time of the hearing. The Landlord's Application was filed September 14, 2018, well outside of the 15-day time limit set out in section 38(1) of the *Act*.

I note that none of the exceptions set out in sections 38(2) to 38(4) of the *Act* apply in this case given my finding that the Tenant did not extinguish her rights in relation to the security deposit and given the testimony in relation to the absence of an outstanding monetary order or consent from the Tenant allowing the Landlord to keep the security deposit.

I find the Landlord failed to comply with section 38(1) of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. The Landlord therefore must pay the Tenant $10,500.00. No interest is owing as the amount has been 0% since 2009.

I note that the Landlord collected a security deposit equal to one month's rent. This is a breach of section 19(1) of the *Act* which states "A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement" [emphasis added]. I have doubled the entire security deposit as it was collected and held as a security deposit and therefore is subject to the requirements under section 38 of the *Act*.

The Landlord is still entitled to seek compensation for loss of rent and I consider that request now.

Considering the evidence provided, I am not satisfied the Landlord is entitled to compensation for loss of rent for the following reasons.

The Landlord did not do a move-in Condition Inspection Report as required and therefore I am not satisfied of the condition of the rental unit at the start of the tenancy. The co-landlord testified that the rental unit was brand new. I do not find this sufficient to prove the detailed state of the rental unit at the start of the tenancy. The Tenant denied that she damaged the rental unit. Without reliable evidence of the detailed state of the rental unit at the start of the tenancy, I am not satisfied the Tenant caused the damage alleged.

The Landlord did submit photos of the rental unit at the start of the tenancy. These are not date stamped such that I can confirm when they were taken. The Tenant did not acknowledge that these are accurate. The photos from the start of the tenancy do not show the rental unit in detail, other than the landscaping which I will address below. I do not find the photos to be strong evidence of the state of the rental unit at the start of the tenancy.

The Landlord did not have the caretaker complete a Condition Inspection Report at the end of the tenancy as required. Therefore, I am not satisfied of the state of the rental unit at the end of the tenancy. The Landlord submitted photos of the alleged damage. These are not date stamped such that I can tell when they were taken. The Tenant disputed that she caused damage and questioned when the photos were taken. The Landlord testified that nobody else had been in the rental unit after the Tenant; however, there is no evidence before me supporting this. In the absence of a Condition Inspection Report which would be an accurate account of the rental unit at the end of the tenancy, I am not satisfied the Tenant caused the alleged damage.

Further, I am not satisfied from the evidence that the alleged damage prevented the Landlord from re-renting the rental unit.

I have reviewed the photos of the alleged damage. I am not satisfied from the photos that the interior of the rental unit was damaged beyond reasonable wear and tear for a two-year tenancy. Many of the photos show only minor damage. The *Act* does not require the Tenant to leave the rental unit in perfect condition. The *Act* only requires that the Tenant leave the rental unit "reasonably clean, and undamaged except for reasonable wear and tear". If the Landlord chose to delay re-renting the unit so that it could be brought up to a standard of perfection, that is not the responsibility of the Tenant.

I do not accept that the Landlord could not re-rent the unit based on the damages shown in the photos or detailed in her testimony. I do not find items such as the toilet roll hanger and light bulbs to be significant

such that it was reasonable to delay re-renting the unit for a month. Nor do I accept that the Landlord could not re-rent the rental unit because of the lawn or hedges as I am not satisfied these are such significant issues that other tenants would not want to live in the rental unit because of them.

The Landlord submitted that the rental unit had to be cleaned. The Landlord submitted photos showing only one small area of the rental unit was not clean. The area appeared to be previously under a bed. This would have taken approximately 30 minutes to clean, at most. I do not accept that this caused the rental unit to be unrentable for a month.

Importantly, the Landlord did not try to re-rent the rental unit upon the Tenant vacating. I do not accept that the Landlord could not re-rent the rental unit for August when she did not attempt to do so.

In the circumstances, I am not satisfied the Tenant breached the *Act* by leaving the rental unit dirty or damaged beyond reasonable wear and tear. Even if she had, I am not satisfied the Landlord minimized her loss in this regard given she did not attempt to re-rent the unit for August. I am not satisfied the Landlord is entitled to compensation for loss of rent.

Given the Tenant was successful, I award her reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the Landlord was not successful, I decline to award her reimbursement for the filing fee.

In total, the Landlord must pay the Tenant $10,600.00 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant's Application is granted.

The Landlord's requests for compensation for monetary loss or other money owed and reimbursement for the filing fee are dismissed without leave to re-apply.

The Tenant is issued a monetary order for $10,600.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 30, 2019

Residential Tenancy Branch