Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* (*"Act"*). The tenant applied for a monetary order in the amount of $450.00 for the return of their security deposit and to recover the cost of the filing fee.

The tenant and an agent of the landlord MH ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The agent confirmed that the tenant's evidence was received and reviewed prior to the hearing. The agent also confirmed that the landlord did not serve documentary evidence in response to the tenant's application.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant was advised that the tenant failed to amend her application in accordance with Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). RTB Rule 4.1 requires an applicant to complete an Amendment to an Application for Dispute Resolution form and to file that completed form with the RTB and to serve that form on the respondent; neither of which the tenant did in the matter before me. In addition, although the tenant submitted a Monetary Order Worksheet ("MOW") the tenant is unable to amend her application through the submission of evidence or a MOW as the RTB Rule 4.1 does not permit an amendment through the submission of evidence or a MOW. As a result, the tenant was advised that I would only be considering her application for the return of the $450.00 security deposit and filing fee

as those were the only two amounts that the tenant had properly applied for and to which the respondent was served with through the tenant's application.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issues to be Determined

- Is the tenant entitled to the return of their security deposit as claimed?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The parties agreed that a fixed-term tenancy began on May 1, 2017 and that the keys were return to the landlord on September 4, 2018. The parties also agreed that the tenant finally removed her chest freezer from the front covered area near the entrance to the rental unit on September 19, 2018.

The tenant filed her application against the landlord on September 29, 2018. The landlord testified that an e-transfer payment of the $450.00 security deposit was sent by email to the tenant dated September 30, 2018. The tenant affirmed that she opened the email on October 1, 2018, and did not deposit the e-transfer payment of $450.00 as it did not include the $100.00 filing fee.

The tenant claims that she was given verbal permission by the parents of the landlord that the tenant was allowed to leave her chest freezer outside the rental unit. The landlord testified that the landlord did not consider the tenant vacated until September 19, 2018, when the tenant finally removed her personal belongings from the rental unit, which includes the covered area directly outside the rental unit entrance that the tenant had exclusive possession of until vacant. The landlord also stated that the tenant was not being charged any rent or money for leaving her chest freezer outside the rental unit entrance covered area until September 19, 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties clearly disagreed as to when the tenancy ended. The tenant's position is September 4, 2018, when the tenant returned the rental unit keys. The landlord's position is September 19, 2018, when the tenant vacated the rental unit by finally removing the last of her personal belongings; the tenant's chest freezer from the covered area, next to the rental unit entrance. Section 44(1) of the *Act* applies and states:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(d) **the tenant vacates or abandons the rental unit**;

[Emphasis added]

In addition, section 38(1) of the *Act* applies and states:

> **Return of security deposit and pet damage deposit**
>
> **38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**
>
> **(a) the date the tenancy ends, and**
> **(b) the date the landlord receives the tenant's forwarding address in writing,**
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> [Emphasis added]

Based on the above, and taking into account Black's Law Dictionary definition of vacate, which is "to leave empty" I find that the tenant did not formally vacate the rental unit until September 19, 2018. I find the covered area directly outside of the rental unit is part of the rental unit as the tenant would be entitled to exclusive use of that area during the tenancy. Therefore, I find that by leaving her chest freezer next to the entrance of the covered area of the rental unit that the 15 day timeline under section 38 of the *Act* did not begin until September 19, 2018. Furthermore, I find that 15 days after September 19, 2018, would be **October 4, 2018**. As a result, I find the tenant's application which was filed on September 29, 2018, was premature as it was before October 4, 2018.

Consequently, I find the tenant has failed to meet parts one, two and four of the four-part test for damages or loss described above. Therefore, I find the penalty provision of section 38 does not apply in this matter as I find the landlord did return the tenant's security of $450.00 within 15 days of September 19, 2018, by sending an e-transfer to the tenant dated September 30, 2018. I also note that the tenant confirmed receiving the e-transfer on October 1, 2018, but did not accept the amount as it was missing the filing fee amount of $100.00.

I find the tenant is not entitled to the filing fee of $100.00 under section 72 of the *Act* as I find the tenant prematurely applied for the return of their security deposit.

Therefore, I grant the tenant $450.00 for the return of the original security deposit only which does not include the filing fee, pursuant to section 67 of the *Act.*

In addition, RTB Rule 2.9 states that an applicant may not divide a claim. Therefore, I do not grant the tenant liberty to apply for further compensation under the *Act* related to this tenancy. I find that such an application would be an attempt to divide a claim and is not permitted under the *Act.*

Conclusion

The tenant's application was premature as described above. Therefore the tenant is only granted the original $450.00 security deposit which she failed to accept by e-transfer from the landlord. I do not grant the filing fee as a result.

The tenant has failed to provide sufficient evidence to meet parts one, two and four of the test for damages or loss described above. The tenant is granted a monetary order of $450.00 for the original security deposit only. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2019

Residential Tenancy Branch