Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL-S (Landlord)
FFT, MNDCT, 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 November 09, 2018 (the "Tenant's Application"). The Tenant applied for return of double the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Landlord filed the application January 10, 2019 (the "Landlord's Application"). The Landlord applied to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the 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 is only seeking return of double the security deposit and reimbursement for the filing fee.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues were raised in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the 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 recover unpaid rent?

4. Is the Landlord entitled to keep the security deposit?

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

Background and Evidence

Two written tenancy agreements were submitted as evidence.

The first tenancy agreement between the parties started April 01, 2017 and was for a fixed term of one year ending March 31, 2018. The agreement included a vacate clause. Rent was $1,145.00 per month due on the first day of each month.

The second tenancy agreement between the parties started April 01, 2018 and was for a fixed term of one year ending March 31, 2019. Rent was $1,145.00 per month due on the first day of each month. The security deposit of $572.50 was applied from the previous agreement.

Both parties agreed the Tenant vacated the rental unit September 18, 2018.

The parties agreed the Tenant provided her forwarding address to the Landlord in writing July 31, 2018.

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 parties agreed on the following. The parties did a move-in inspection March 03, 2017. The unit was empty. A Condition Inspection Report was completed and signed

by both parties. A copy of the report was given to the Tenant the day of the inspection or shortly after.

The parties agreed on the following. The parties did a move-out inspection September 18, 2018. The unit was empty. A Condition Inspection Report was completed and signed by both parties. A copy of the report was mailed to the Tenant around the middle of October.

In relation to the Landlord's request for compensation, the Agent testified as follows. The Landlord is seeking October rent as the Tenant signed the tenancy agreement ending March of 2019 but ended the tenancy early. The Landlord received the Tenant's notice July 31st that she was vacating at the end of September. The Landlord tried to re-rent the unit as soon as possible. The Landlord found new tenants mid October but the tenants could not start their tenancy until November 1st.

The Agent further testified as follows. The vacancy rates in the city are high. The Landlord put the unit on the "push list" meaning the Landlord tried to re-rent the unit before other available units the Landlord has. The Landlord listed the rental unit on their vacancy list, their own website and a further rental site. The unit was listed for $1,150.00 and was re-rented for this price. The unit was likely re-rented on a fixed term but she is not sure.

The Tenant testified as follows. Her ending the tenancy early was not an unforeseen circumstance as she told the Landlord she was looking for a house. She asked to do a month-to-month tenancy and the Landlord originally agreed to this but then revoked that agreement. She was not aware that the vacate clause was no longer enforceable at the end of the tenancy and therefore thought her only option was to either move out or sign another one-year agreement. Vacating was not an option because it was not practical for her. This would have been expensive, time consuming and for an indeterminate amount of time. She felt like she had no choice but to sign the agreement. She was forced to sign the one-year agreement.

The Tenant further testified as follows. She gave 60 days notice. She accommodated showings. She had the unit professionally cleaned upon move out.

The Tenant submitted that the Landlord submitted an altered document for the hearing. I understood the Tenant to say this was relevant to show the Landlord intentionally misled her into signing the one-year lease. The Tenant was not able to point to any

evidence that the Landlord intentionally misled her into signing the one-year lease. She said this was done over the phone.

The only evidence the Tenant pointed to when asked about her evidence was the following:

- An email from the Landlord showing they agreed to the month-to-month option
- Phone records which she submitted supported that the Landlord revoked the month-to-month option
- A November 26th email showing the Landlord revoked the month-to-month option

In reply, the Agent testified that the Tenant was given the option of month-to-month but chose to sign a one-year lease because the rent would stay the same if she did. The Agent denied that the Landlord revoked the month-to-month option. The Agent denied that the Landlord intentionally misled the Tenant into signing the one-year lease.

Analysis

Section 7 of the *Residential Tenancy Act* (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:
>
> - 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.

There is no issue that the Tenant participated in the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it relevant whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment relates to claiming against the security deposit for damage and therefore is not applicable here.

There is no issue that the Landlord received the Tenant's forwarding address in writing on July 31, 2018. There is no issue that the Tenant vacated the rental unit September 18, 2018. The evidence shows the Tenant gave notice to end the tenancy as of September 30, 2018.

I find that September 30, 2018 is the latest date that is relevant 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 September 30, 2018.

There is no issue that the Landlord did not return the security deposit. The Landlord filed the Landlord's Application January 10, 2019, well outside the time limit for claiming against the security deposit set out in section 38(1) of the *Act*.

Given the testimony of the parties, and my finding above, there is no issue that the exceptions set out in sections 38(2) to 38(4) of the *Act* do not apply in this case.

It is my understanding that the Landlord kept the security deposit because the Tenant ended the tenancy early. The Landlord was not permitted to do so without filing an application for dispute resolution in accordance with section 38 of the *Act*.

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 $1,145.00. No interest is owing as the amount has been 0% since 2009.

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

I find the Tenant breached the tenancy agreement and *Act* by ending the fixed term tenancy agreement early.

The Tenant submitted that she was forced into signing the one-year fixed term agreement. I do not accept this. The Tenant did not submit any evidence showing the Landlord forced her to sign the agreement. None of the circumstances described by the Tenant amount to duress or the Landlord forcing the Tenant to sign the agreement.

What the Tenant described was a situation where she thought her only options were to sign a one-year fixed term agreement or move out. This belief was based on the Tenant not knowing that the vacate clause was no longer enforceable. The Tenant claimed the Landlord intentionally misled her in this regard. The Agent denied that the Landlord did so. The Tenant submitted no evidence that the Landlord did so. I do not accept that the Landlord intentionally misled the Tenant about the situation.

Further, it was not the responsibility of the Landlord to inform the Tenant of her rights. It was the responsibility of the Tenant to know her rights and educate herself about her options. The Tenant failed to do so which is what led to her belief that her only options were to move out or sign the one-year fixed term agreement. This is not the fault of the Landlord, it is the fault of the Tenant.

Further, I do not accept that the Tenant was forced to sign the one-year fixed term agreement because she felt she either had to move out or sign it. The circumstances described by the Tenant amount to moving out being inconvenient for her. I find the Tenant felt she had two options and chose the option that worked better for her in the circumstances. This does not amount to being forced to sign the agreement. I find the Tenant chose to sign the one-year fixed term agreement. She is bound by that agreement.

I do not find it relevant that this was a foreseen circumstance. The Tenant chose to sign a one-year fixed term tenancy. She was bound by that whether the Landlord was aware she was looking for a house or not.

In relation to the Landlord revoking the month-to-month option, I do not find the Tenant has submitted sufficient evidence showing this occurred. The Agent denied that the Landlord did so. The Tenant said this happened over the phone. She referred to phone records showing a phone call between the parties. This is not useful evidence in determining what conversation was had between the parties. The only other evidence the Tenant pointed to was an email she wrote to the Landlord stating this happened. There is no evidence the Landlord acknowledged it happened or agreed it happened. I do not find the email to be strong corroborative evidence of the Tenant's position.

However, I do not find it relevant whether the Landlord revoked the month-to-month option or not. The fact is the Landlord presented the Tenant with a one-year fixed term tenancy agreement and she chose to sign it. She is bound by it.

I accept that the Landlord lost rent for October as a result of the Tenant's breach. The Tenant did not dispute the testimony of the Agent in relation to re-renting the unit for November 1, 2018.

I accept the testimony of the Agent in relation to the steps the Landlord took to re-rent the unit as the Tenant did not dispute this testimony. I find the steps taken were reasonable. I note that the unit was re-listed for $5.00 more per month. Although increasing the rent can show the Landlord failed to mitigate, the amount here is so small that I do not find the Landlord failed to mitigate. Further, the Landlord is only seeking compensation for one month's rent which I find reasonable where a tenant breaches the tenancy agreement and *Act* by ending a fixed term tenancy early.

I do not find the fact that the Tenant gave 60 days notice or that she was cooperative with the Landlord's efforts to re-rent the unit to relieve the Tenant of her obligation to reimburse the Landlord for loss of rent. The Tenant was not permitted to end the tenancy early and breached the tenancy agreement and *Act* by doing so. The Landlord lost rent as a result. The Tenant is responsible for reimbursing the Landlord for the lost rent whether she was cooperative or not.

I find the Landlord is entitled to reimbursement for October rent in the amount of $1,145.00.

Both parties sought reimbursement for the filing fee. Both parties were successful in their applications. Each party can bear the cost of the filing fee for their own application in the circumstances.

In summary, the Landlord must return $1,145.00 to the Tenant as double the security deposit. However, the Tenant owes the Landlord $1,145.00 for loss of rent. Therefore, the Landlord can keep the security deposit and neither party is issued a Monetary Order.

Conclusion

The Landlord must return $1,145.00 to the Tenant as double the security deposit. However, the Tenant owes the Landlord $1,145.00 for loss of rent. Therefore, the Landlord can keep the security deposit and neither party is issued a Monetary Order.

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: March 14, 2019

Residential Tenancy Branch