Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, MNDCT, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security and two FOB deposits, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 91 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with section 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant said that she did not serve her two medical notes and her monetary order worksheet to the landlord. The landlord said that she did not receive these documents. I notified both parties that I could not consider these documents at the hearing or in my decision because they were not served by the tenant, as required.

Preliminary Issue – Tenant's Adjournment Request

At the outset of the hearing, the tenant requested an adjournment. She said that she wanted more time to gather documents and serve them to the landlord. The tenant filed her application on February 19, 2019, one month before this hearing on March 19, 2019. The landlord filed her application on December 11, 2018 and was ready to proceed with this hearing.

During the hearing, I advised both parties that I was not granting an adjournment of the tenant's application. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

I find that the tenant filed her application on her own accord, as no one required her to do so. At the time of that filing on February 19, 2019, the tenant was immediately notified of this hearing date on March 19, 2019. The tenant had an entire month to prepare for this hearing, but was also aware of this hearing date from the landlord's application, which she received two months prior in December 2018. The tenant submitted a voluminous amount of evidence, particularly in response to the landlord's application, and had a fair opportunity to respond and present her own application evidence. I find that a further delay in the hearing date would prejudice the landlord, who was ready to proceed.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?
Is the tenant entitled to the return of double the amount of her security and two FOB deposits?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 15, 2016 and ended on November 30, 2018. Monthly rent in the amount of $1,325.00 was payable on the first day of each month. A security deposit of $662.50, the first FOB deposit of $157.50 including tax and a second FOB deposit of $75.00 were paid by the tenant and the landlord continues to retain all three deposits in full. Move-in and move-out condition inspection reports were completed for this tenancy. A forwarding address was provided by the tenant to the landlord by way of an email on November 21, 2018. The landlord did not have any written permission to keep any amount from the tenant's security deposit. The landlord filed her application to retain the security deposit on December 11, 2018. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of $6,724.84 plus the $100.00 application filing fee. The tenant disputed the landlord's entire claim. The landlord seeks $100.00 total for three late fees and one NSF fee of $25.00 each. The landlord seeks $200.00 for an estimated bike locker strata fine that has not been imposed, $5.00 for an estimate for a key for the bike locker, and $2,482.50 for move-out repairs and cleaning. The landlord seeks $30.14 for a shelf liner for the bathroom and kitchen. The landlord seeks a $3,000.00 estimate to replace the carpet which has not been incurred, which the tenant said there was no damage to the carpet. The landlord seeks $120.00 to clean the balcony as an estimate, which has not been incurred, and which the tenant said she cleaned and had some pre-existing marks from before her tenancy. The landlord seeks $637.50 for the tenant's son living at the rental unit as an additional occupant for two months, at 25% of the monthly rent minus the tenant's payment of $25.00 previously. The tenant seeks a monetary of $6,195.00 plus the $100.00 application filing fee. The tenant seeks the return of double the amount of her security deposit of $662.50, her first FOB deposit of $157.50, and her second FOB deposit of $75.00. The tenant also

seeks a return of her move-in and move-out fee of $300.00. The tenant further seeks $4,500.00 for a loss of wages from January 8 to February 25, 2019, that she said was from the stress and harassment that the landlord caused with the visitor parking permit, her application and forcing her to move out pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") that the tenant did not dispute. The landlord disputed the return of the move-in and move-out fee of $300.00 and the loss of wages of $4,500.00 but agreed to repay the security and FOB deposits.

Both parties agreed that they attended two previous RTB hearings regarding this tenancy on June 18, 2018 and October 9, 2018, after which two decisions, dated June 20, 2018 and November 8, 2018, were issued by different Arbitrators. The file numbers for both hearings appear on the front page of this decision. Both parties agreed that the Arbitrator issued a $75.00 rent reduction award for the second FOB deposit to the tenant in the November 8, 2018 decision but the tenant did not enforce it because she got her last month's rent free pursuant to the landlord's 2 Month Notice.

Analysis

Landlord's Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's entire application for $6,724.84, without leave to reapply.
I dismiss the landlord's application for $350.00 for the bike locker fine and to change the lock, $5.00 for the key for the bike locker, $3,000.00 to replace the carpet, and $120.00 to clean the balcony. The landlord did not provide receipts for these amounts. The landlord only provided estimates, did not incur these costs, and may not incur these

costs in the future, particularly where it relates to the bike locker fine, to change the lock and the key for the bike locker as they have not even been imposed by strata.

I dismiss the landlord's application for $2,482.20 for move-out repairs and cleaning. The landlord did not provide a receipt for this amount, only an invoice with a balance due. The landlord provided copies of three cheques that she says she issued for the above amount but said that only one cheque was cashed for $400.00, and she did not know if the other two cheques were cashed. She did not provide documentary proof that the $400.00 cheque was cashed.

I dismiss the landlord's claim for $30.14 for the shelf liner, as the tenant disputed that it was soiled and stated that she cleaned it upon vacating the rental unit.

I dismiss the landlord's claim for $637.50 for the tenant's son living in the rental unit as an extra occupant. The tenant said that he was only there for a month, she only had 50% custody for three to four days per week, and she had her son live with his father when the landlord indicated it was problem. The tenant is entitled to have guests at the rental unit and the landlord cannot charge a fee for this, particularly when the landlord does not know what dates the tenant's son was staying over.

I dismiss the landlord's application for the late rent fee of $25.00 for three late rent payments and $25.00 for an NSF fee, totaling $100.00. The landlord did not show that her bank charged her any NSF fee of $25.00, only that one cheque was returned for insufficient funds, which the tenant said was a bank error, as per her evidence. The tenant disputed the late rent payments, indicating that the landlord changed property managers, insisted on picking up post-dated rent cheques after the tenant had already given them to the former property manager, and the landlord would not let her mail new cheques and initially refused the cheques, waiting to find another property manager. The landlord agreed with this information during the hearing.

Since the landlord was unsuccessful in her application, I find that she is not entitled to recover the $100.00 application filing fee from the tenant.

Tenants' Application

During the hearing, the landlord agreed to return the tenants' FOB deposit amount of $157.50 for the first FOB and $75.00 for the second FOB. Accordingly, I order the landlord to repay this amount of $232.50 to the tenant. The $75.00 was provided as a

rent reduction to the tenant in a previous hearing; however, no monetary order was given. Based on the landlord's agreement to repay, I am providing the tenant with a monetary order for same, and she can only collect the $75.00 one time. The tenant is not entitled to double the amount of the two FOB deposits, as the doubling provision only applies to security and pet damage deposits, not FOB deposits, as per section 38 of the *Act*.

I award the tenant $300.00 for the return of her move-in and move-out fee. Section 4(hh) of the parties' written tenancy agreement indicates that this fee is refundable and the tenant provided a receipt in the landlord's name from the landlord's property management company indicating that she paid this amount to the landlord. I do not accept the landlord's submission that because her property management company received the money and they no longer work for her, that she did not receive the money and she is not responsible for it. The landlord agreed that the property management company was her agent during this tenancy. Therefore, the company received the money on behalf of the landlord, as indicated on the receipt provided by the tenant. I do not accept the landlord's submission that the tenant has to approach strata for this refund, as the tenant paid the amount to the landlord and it was received by the landlord's property management company on her behalf, as noted above.

I dismiss the tenants' application for $4,500.00 in lost work wages. The tenant did not provide documentary evidence from her employer of this wage loss. The tenant did not provide medical documents that she suffered from stress as a result of the landlord's actions. The tenant is claiming for stress after moving out of the rental unit, after she did not dispute the 2 Month Notice, and after filing three of the four applications between these parties that has been heard at the RTB, as the landlord filed only once.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on November 30, 2018. The tenant provided a written forwarding address to the landlord on November 21, 2018, by email. Although email is not a valid written service method under section 88 of the *Act*, I find that the landlord was sufficiently served with it, as per section 71(2)(c) of the *Act*, agreeing that she received it.

The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant. However, the landlord made an application on December 11, 2018, within 15 days of the end of tenancy on November 30, 2018, to claim against the deposit. Therefore, I find that the tenant is not entitled to receive double the value of her security deposit, only the regular return of $662.50.

As the tenant was partially successful in her application, I find that she is entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $1,295.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply. The landlord's entire application is dismissed without leave to reapply.

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: March 20, 2019

Residential Tenancy Branch