Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

The tenant seeks compensation for the loss of laundry facilities during her tenancy, and compensation for the return of her security deposit, pursuant to sections 38 and 67, respectively, of the *Residential Tenancy Act* (the "Act").

The tenant applied for dispute resolution on January 23, 2019 and an arbitration hearing was held on May 16, 2019. The tenant, the tenant's advocate, and the landlord attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Neither party raised any issue with respect to the service of evidence or with the Notice of Dispute Resolution Proceeding.

I have corrected the landlord's name on the tenant's application and this is reflected in the style of cause.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issues

1. Is the tenant entitled to compensation for the loss of laundry facilities?

2. Is the tenant entitled to compensation for the return of her security deposit?

Background and Evidence

The tenancy began on March 1, 2018 and ended on November 30, 2018. Monthly rent was $1,000.00 and the tenant paid a security deposit of $500.00. Included in the rent was laundry. A copy of the written tenancy agreement was submitted into evidence.

The tenant testified that on the day she moved out, November 30, 2018, she provided the landlord with her forwarding address in writing. As of today, the landlord has not returned the tenant's security deposit. The tenant testified that she did not agree in writing that the landlord could retain any or all the security deposit. She seeks compensation in the amount of the security deposit, doubled.

The tenant's advocate referred me to the written tenancy agreement in which, on page 2, the box marked "Laundry (free)" is checked as ☒, indicating that laundry services or facilities are included in the rent.

During approximately the last month and a half, a "good 4 to 5 weeks" according to the tenant, the landlord put a lock on the door through which the washer and dryer could be accessed in the laundry room.

According to the tenant, the landlord was unhappy with the amount of laundry that the tenant was doing and told the tenant that she could only do one load of laundry a week. The tenant testified that this was insufficient and needed to do at least 2 or 3 loads per week. As a result, the tenant had to take her laundry to a laundromat—which was located about 8 blocks distant—by way of taxi.

The tenant's advocate argued that the $150.00 sought for compensation represents the time and money expended by the tenant in having to do her laundry elsewhere because of the laundry room being locked. The tenant added that this is "a low estimate" for what it cost her.

The landlord testified that when the tenant moved into the rental unit on March 1, 2018, there was a verbal agreement between the parties by which the tenant would be permitted to do a maximum of two loads of laundry per week. But, the tenant was doing "laundry almost every day," according to the landlord.

The landlord asked the tenant to reduce the amount of laundry that she was doing, because the tenant was "really abusing the machine."

Regarding the security deposit, the landlord testified that the tenant wrecked the dryer and they she had to hire a repairperson to fix the machine. In addition, there was other damage to the rental unit, such chips to the cupboards that the tenant allegedly agreed to during a conversation at the end of the tenancy.

The landlord testified that she had witnesses to the events surrounding the laundry restrictions and usage, and, regarding the damage to the rental unit (and related conversations). Neither party called any witnesses during the hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Tenant's Claim for Compensation for Loss of Laundry Facilities

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, the tenancy agreement clearly indicated that laundry was included in the rent. Section 13(1) of the Act states that a tenancy agreement must be in writing. As such, any terms within a tenancy agreement must also be in writing. And, while landlords and tenants are not prohibited from entering into oral agreements concerning the terms of the tenancy, where there is a dispute between the parties concerning such

terms then the written term in the tenancy agreement shall prevail, unless there is written evidence to the contrary.

The landlord argued that there was an agreement about the quantity or frequency of laundry that the tenant could do. The tenant denied that there was any such agreement. When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord failed to prove that the tenancy agreement in any way restricted the quantity of laundry that the tenant could do. I find that the landlord failed to comply with the tenancy agreement by restricting access to the laundry.

But for the landlord's breach of the tenancy agreement by placing a lock on the laundry room, the tenant would not have expended unnecessary time and money in doing her laundry elsewhere.

While the tenant did not submit any receipts for the cost of travelling to the laundromat, or any accounting of her time, I find that a claim for $150.00 for the loss of laundry facilities over the course of four to five weeks to be a reasonable amount, and as such I award this amount as nominal damages for her loss.

Tenant's Claim for Compensation for Return of Security Deposit

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

> (1) repay any security deposit or pet damage deposit to the tenant, or
> (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, the landlord did not dispute that she had the tenant's forwarding address on November 30, 2018. Thus, she had until December 15, 2018, to either repay the security deposit or apply for dispute resolution claiming against the deposit. She did neither.

Further, there is no evidence that the tenant agreed, in writing, that the landlord could retain any or all the security deposit. If the tenant did, in fact, agree to the landlord retaining any of the security deposit, there is no evidence of this agreement.

Based on the above, I find that the landlord did not comply with section 38(1) of the Act. I turn next to section 38(6) of the Act, which states that

> If a landlord does not comply with subsection [38](1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlord did not comply with section 38(1) of the Act, it follows that the landlord must pay the tenant double the amount of the security deposit ($500.00) in the amount of $1,000.00. Thus, I grant the tenant a monetary award for this amount.

Conclusion

I grant the tenant a monetary order in the amount of $1,150.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: May 16, 2019

Residential Tenancy Branch