Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT
Landlord: MNDL, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant's application seeks:

- The return of the $350.00 security deposit from the Landlord,
- Recovery of the $350.00 spent on staying in a hostel, while looking for accommodation,
- Recovery of the cost of the title search, seeking the Landlords' names, and
- Recovery of the $100.00 application filing fee.

The Landlord filed a claim for:

- $4,250.00 in compensation for damage caused by the Tenant to the rental unit, and
- Recovery of the $100.00 application filing fee.

The Tenant and the Landlord, A.A., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the applications

or the documentary evidence back and forth. Both Parties said they had received the application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

While preparing the Decision, I became aware that there were two tenancy agreements for the Tenants, S.H. and D.H, both of whom applied for dispute resolution within one application. However, as these are two separate tenancies, I am precluded from addressing them both in one decision. As such, since S.H. attended the hearing and testified, and D.H. did not, I have considered the evidence before me as relating to S.H.'s tenancy only. The Tenant, D.H., must apply for dispute resolution separately for his own claims.

The Parties submitted the written tenancy agreement; however, it does not comply with section 13(2)(b) of the Act in that it does not set out the correct legal name of the Landlord. In addition, the tenancy agreement does not set out the address for service and telephone number of the Landlord or the Landlord's Agent, as required by section 13(2)(e). Further, the tenancy agreement is not clear regarding whether utilities are included in the monthly rent or are an extra charge. This conflicts with section 13(2)(f)(vi), regarding what services and facilities are included in the monthly rent. Given these and other problems with the tenancy agreement, I recommend the Landlord obtain a copy of the residential tenancy agreement provided on the RTB website for use in future tenancies.

In addition, the Parties agreed that the monthly rent was $625.00 and that the Tenant paid a security deposit of $350.00. I caution the Landlord that pursuant to section 19 of the Act, "a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of half of one month's rent payable under the tenancy agreement." Accordingly, the Tenant paid the Landlord $37.50 too much in deposit, based on the monthly rent paid by the Tenant.

At the outset of the hearing, I advised the Parties of their respective obligations as Applicants applying for compensation against the other, including that they both hold the

burden of proving their respective claims on a balance of probabilities. I explained the four-part test for establishing a monetary claim set out in Policy Guideline #16, namely that each Applicant must prove:

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

[the "Test"]

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the Tenant had a fixed term tenancy agreement with the Landlord that began on January 1, 2019, and was to run to June 30, 2019, with monthly rent of $625.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $350.00 and no pet damage deposit. The Parties agreed that they did not do a move-in or move-out inspection of the condition of the rental unit, pursuant to the Act. The Parties agreed that the Tenant gave the Landlord his forwarding address in an email dated February 15, 2019.

The Parties agreed that the tenancy ended on January 31, 2019, after the Landlord told the Tenant in a text message dated January 18, 2019, that the Tenant would have to leave right away. The Landlord said he believed the Tenant was smoking cannabis in the rental unit, contrary to the tenancy agreement. The Tenant said he convinced the Landlord to let him stay until the end of the month, as he did not have any place to go.

I cautioned the Landlord that the Act requires landlords to give tenants one month notice of the end of a tenancy for cause, pursuant to section 47 of the Act. This means that the effective vacancy date would have been at the end of February 2019 in this case. I further advised that a text message is not an appropriate way to communicate

the end of a tenancy to a tenant, so in this case, according to the Act, the Tenant was not required to vacate the rental unit based on the Landlord's notice. I recommend that the Landlord consult the Act and the RTB for future tenancy matters.

TENANT'S CLAIMS

During the hearing, the Tenant said he is looking for the return of his $350.00 security deposit and recovery of the $100.00 Application filing fee. The Tenant said he withdrew the other claims he made in his application. The Tenant submitted a copy of a text from the Landlord dated February 3, 2019, in which the Landlord informed the Tenant that his security deposits would not be refunded, because he repeatedly broke the house rules by smoking cannabis inside and at the entrance to the basement suite.

The Tenant submitted an undated text from the Landlord saying that when the Landlord receives the Tenant's forwarding address, the Landlord will immediately file a rental complaint with the RTB demanding that the Tenant pay rent for February 2019, and for the rest of the term of the lease, until the Landlord finds a new tenant. The text also said that charges will be added for cleaning.

The Tenant said that the Landlord did not do a walk-through of the rental unit before or at the end of the tenancy, so he cannot now make a claim against the security deposits.

LANDLORD'S CLAIMS

The Landlord said his claim is based on the fact that he could not re–rent the rental unit, because he said it smelled of cannabis. In the hearing the Landlord said:

> That's my reason not to give them the deposit in the beginning. People didn't like the smell. That's why – couldn't rent a single room in the basement. I tried with cleaning, perfumes, tried to clean it out and paint the walls. It's really very hard, because you can't take pictures of the weed. I was not in a position to deal with this because of my health. I'll give them the deposits and let them go and be finished with the problem because I am not healthy enough to deal with this.

The Landlord commented on the plastic bag that the Tenant had taped to the wall of his room. The Landlord also said that this Tenant damaged the vent in the room and had a pole holding it together, which he evidenced with submitted photographs.

The Tenant said:

> These claims that we owe him $4,000.00 are ridiculous, because he evicted us. If he couldn't fill the rooms for the next five months that's his fault. We were thrown out of the place, based on false claims. These are vague reasons why we owe him money. The vent was hanging down in my room, so I used a plastic pole to hold it in place a couple days before we moved out. There was no damage – just an innovative way to keep the dust from blowing on my head. The hole in the wall was there when we moved in. I placed a plastic bag on the wall, because there was a draft, so I used a plastic bag to cover it up. I was just making a DIY repair. There's no reason we owe him any money there. Regardless, he didn't do a walk through with us on our moving out day, so all his claims are nullified. We were the ones that were asked to leave.

The Tenant also said that the Landlord emailed him before he left, saying that he would receive his security deposit back, if he cleaned his room. He said: "We cleaned it top to bottom before we moved out. I never accepted the amount he tried to give me, because it wasn't the whole amount. We're both owed our security deposits back in full."

The Parties both referred to a third tenant in the residential property who could corroborate their respective versions of events. However, they agreed that this person had moved to India and no one provided any evidence from him.

Analysis

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

Pursuant to sections 23, and 35 of the Act, a landlord must complete a condition inspection report ("CIR") at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36. Further, landlords are required by section 24(2)(c) to complete and give tenants copies of CIRs in accordance with the regulations.

Section 32 of the Act requires a tenant to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the

tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #16 ("PG #16") states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due." The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act.

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. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

TENANT'S CLAIMS

I find that the Tenant provided his forwarding address to the Landlord on February 15, 2019, and that the tenancy ended on January 31, 2019. Section 38(1) of the Act states the following regarding the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

Pursuant to Section 38(1), the Landlord was required to return the $350.00 security deposit to the Tenant within fifteen days of February 15, 2019, namely by March 2, 2019, or to apply for dispute resolution to claim against the security deposit. The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution within this timeframe. Rather, the Landlord applied for dispute resolution on June 3, 2019. As a result, I find that the Landlord failed to comply with his obligations under Section 38(1) of the Act.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit.

I, therefore, award the Tenant with $700.00 from the Landlord in recovery of double the security deposit. There is no interest payable on the security deposit.

LANDLORD'S CLAIMS

The Landlord did not submit a Monetary Work Sheet or explain the basis of his claim for $4,250.00, other than saying that he could not rent the rooms, because of the smell of cannabis at the end of the tenancy.

The Landlord does not have a CIR to compare the condition of the rental unit at the beginning to that at the end of the tenancy. In addition, pursuant to section 24 of the Act, the Landlord extinguished his right to claim against the security deposit for damage to the rental unit. Further, the Landlord ended the tenancy in a way that was inconsistent with the Act.

I find that the Landlord's evidence is not sufficient to meet his burden under the Test. Accordingly, I dismiss his claim without leave to reapply.

I have awarded the Tenant $700.00, as double the return of his $350.00 security deposit. I also award him recovery of the $100.00 Application filing fee for a total award of $800.00.

Conclusion

The Tenant's claim for recovery of double the security deposit is successful in the amount of $700.00 from the Landlord, because the Landlord violated section 38(1) of the Act in not returning the security deposit within the time frame set out in the Act. The Tenant is also awarded recovery of the $100.00 filing fee for this Application from the Landlord for a total award of $800.00.

The Landlord's claim for compensation for other damage or loss against the Tenant is unsuccessful, as he provided insufficient evidence to meet his burden of proof in this matter. Therefore, I dismissed the Landlord's application without leave to reapply.

I grant the Tenant a monetary order from the Landlord under section 67 of the Act in the amount of **$800.00**.

This order must be served on the Landlord by the Tenant 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: July 24, 2019

Residential Tenancy Branch