Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenants' Application for Dispute Resolution was made on January 31, 2019. The Tenants applied for a monetary order for compensation, the return of their security deposit and the return of their filing fee. The Landlord's Application for Dispute Resolution was made on March 29, 2019. The Landlord applied for a monetary order for damages and losses due to the tenancy, permission to retain the security deposit and to recover her filing fee.

The Tenants attended this hearing and were each affirmed to be truthful in their testimony. The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Landlord's Absence at Second Hearing

As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential

Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As this hearing was taking place due to a previously adjourned proceedings, it was the responsibility of the Residential Tenancy Branch to serve the new notice of hearing documents on the Landlord.

I have reviewed the client services note on the Landlord's file, and I noted that the Dispute Resolution and Notice of Hearing document sent to the Landlord by the Residential Tenancy Branch had been returning "moved."

I have reviewed the Landlord's application and find that the Residential Tenancy Branch served the Landlord at the address she, herself, provided to this office. Additionally, as the Landlord was in attendance during the adjourned proceedings of May 16, 2019, I find that the Landlord had a duty to notify this office if her mailing address changed. Accordingly, I find that the Landlord had been duly served in accordance with the Act.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for 25 minutes, and the only participant who called into the hearing during this time were the Tenants. Therefore, as the Landlord did not attend the hearing by 11:25 a.m. and the Tenants appeared and were ready to proceed, I dismiss the Landlords' application without leave to reapply.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of there security deposit?
- Are the Tenants entitled to compensation or other money owed?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that this tenancy started on June 15, 2018, as a month-to-month tenancy, and that rent in the amount of $1,395.00 was to be paid by the fifteenth day of each month. The Tenants testified that they paid the Landlord a $900.00 security deposit and a $200.00 pet damage deposit. The Landlord testified that the Tenants paid a $700.00 security deposit and a $200.00 pet damage deposit. The Landlords submitted a copy of the Tenancy agreement into documentary evidence.

The parties also agreed that the Tenants son had been staying with them and that the Landlord had required that the Tenants add their son to the tenancy agreement. The parties agreed that the Landlord had increased the rent to $1,595.00 per month, for the addition of another person, and that the Tenants paid an additional $200.00 towards the security deposit for this tenancy. The Landlord testified that as of the date of the May 16, 2019 hearing she was holding a $900.00 security deposit and a $200.00 pet damage deposit for this tenancy. The Tenants testified that the as of the date of the May 16, 2019 hearing the Landlord was holding a $1,100.00 security deposit and a $200.00 pet damage deposit for this tenancy. The Landlord submitted three copies of payment receipts for the security deposit, pet damage deposits into documentary evidence.

The parties agreed that the Tenants moved out of the rental unit on October 31, 2018, in accordance with a signed mutual agreement to end the tenancy, and that no move-in or move-out inspection had been completed for this tenancy.

The Tenants testified that they are due compensation in the amount of $602.50 for the Landlord taking a $1,100.00 security deposit for this tenancy, as she was only legally allowed half a month’s rent in the amount of $797.50.

The Tenants testified that their son never lived in the rental unit and that he only visited them from time to time. The Tenants argued that the Landlord had overcharged them rent in the amount of $800.00, and they are requesting the overpayment of rent back. The Landlord testified that the Tenants son did live in the rental unit and that there was no overpayment of rent for this tenancy.

The Tenants are requesting $1,040.00 in compensation for moving cost. The Tenants claimed that the Landlord’s actions during the tenancy made the living situation unbearable and that they had to move again, much sooner than they had intended. The Landlord testified that they had signed a mutual agreement to end the tenancy, that it

was the Tenants decision to move and that she should not be responsible for their cost to move when they ore the ones that decided to leave.

The Tenants are requesting $2,600.00 in compensation due to the Landlord not completed the required move-in and move-out inspections for this tenancy. The Landlord disagreed with the Tenants claim for compensation.

The Tenants are requesting $139.15 in compensation due to the Landlord not responding to their test message request to turn the heat up in the rental unit. A loge of dates that text messages were sent was submitted into evidence.

The Tenants testified that the Landlord had listed the property for sale during their tenancy and that the number of showings conducted by the realtor had been excessive and that proper notice had not been given for entry. The Tenants are requesting $480.00 in compensation due to insufficient notice of entry to the rental unit by the Landlord and the realtor. The Tenants confirmed that they had verbally spoken to the Landlord regarding the number of showings and the realtor's access but that they had never served the Landlord with a formal written complaint regarding the breach nor had they ever denied access to the suit due to improper notice.

Additionally, the Tenants testified that the showing had been so disruptive to their quiet enjoyment of the rental unit that they had to go stay at a local hotel for eight days at a cost of $718.15. The Tenants are requesting to recover their hotel cost from the Landlord.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I find that these parties entered into a month-to-month tenancy agreement for $1,595.00 a month in rent and that the Landlord was holding a $900.00 security deposit and a $200.00 pet damage deposit for this tenancy.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on October 31, 2018, the date the Tenants moved out of the rental unit and provided her forward address to the Landlord. Accordingly, the Landlord had until November 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlords, in this case, did not file to claim against the Tenants security deposit until March 29, 2019.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (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.

Therefore, I find that pursuant to section 38(6) of the *Act,* the Tenants have successfully proven that their entitlement to the return of double their deposits. I find for the Tenants, in the amount of $2,200.00, granting a monetary order for the return of double the security deposit and pet damage deposit.

The Tenants are requesting $602.50 in compensation for the Landlord requiring an overpayment of the security deposit for this tenancy. The Tenants were advised during the hearing that there are no provisions in the *Act* which would provide for the requested compensation. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants are requesting $2,600.00 in compensation for the Landlord's failure to conduct a move-in/move-out inspection. The Tenants were advised during the hearing that there are no provisions in the *Act* which would provide for the requested compensation. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have claimed for $800.00 in rent overpayment, $1,40.00 in moving costs; however, I find that the Tenants have not provided sufficient evidence to support these claims. As such, I dismiss these two portions of the Tenants' claims in their entirety.

The Tenants are also claiming for $139.15 in compensation for the restriction of a service, $480.00 for breach of quiet enjoyment and $718.15 in aggravated damages due to a breach of quiet enjoyment. I accept the Tenants testimony that they never served the Landlord with a written notice regarding what they believed to be a restriction of service, nor a loss of quiet enjoyment. I find that there is a requirement to notify a party, in writing, of a breach to the tenancy agreement, before a request for compensation can be made. As no written notice of either of these breaches were provided to the Landlord, nor was an opportunity to correct the breaches provided, I find that I must dismiss the Tenants claims for these items in their entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their

application, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when she failed to repay or make a claim against the security deposit and pet damage deposit within the required timeline as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **$2,300.00**. The Tenant is provided with this Order in the above terms, and 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.

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: July 5, 2019

Residential Tenancy Branch