Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave undisputed sworn testimony that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on June 15, 2019. At the hearing, the tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that the landlord declined to accept that package and that the package had been returned to the tenant by Canada Post. Canada Post's Online Tracking system confirmed that the package was not retrieved by the landlord and was returned to the tenant as declared on June 27, 2019. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed

served with copies of the tenant's dispute resolution hearing package and written evidence on June 20, 2019, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and other money owed arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided written evidence and sworn testimony that they moved their belongings into the lower level of the landlord's home a few days before the scheduled December 1, 2018 start date for this tenancy and with the landlord's permission. Although the tenant did not sign a tenancy agreement, the landlord provided the tenant with a signed copy of an agreement whereby the tenant could reside in rooms in the lower level of this home in a rural setting (including a bedroom and a bathroom) commencing on December 1, 2018. The tenant testified that they paid their monthly rent of $600.00 for December 2018, and a security deposit of $300.00, as stipulated in the agreement. Since the terms identified in the agreement were not ones that the tenant believed coincided with those discussed in the frequent text messages that the parties exchanged prior to the commencement of this tenancy, the tenant did not sign the agreement.

Although some of the text messages supplied by the tenant referred to a roommate situation, the tenant gave undisputed sworn testimony that they had their own separate room and bathroom in the lower level of this home. While originally the landlord was willing to let the tenant use the kitchen facilities in the landlord's portion of this home, the tenant wanted their own space so set up a makeshift kitchen of sorts in the lower level. The tenant said that the landlord and tenant shared a sink in the lower level of the home, but that this sink was not used as part of the bathroom or kitchen.

The tenant's application for a monetary award of $1,200.00, plus the recovery of their filing fee included the following items:

Item	Amount

Return of Security Deposit	$300.00
Recovery of Rent for December 2018	600.00
Broken Glasses	300.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	**$1,300.00**

The tenant provided sworn testimony and written evidence that the premises were not suitable for occupancy when the tenant moved into this basement rental unit. They maintained that the smell of pet feces and urine was pervasive, and that the landlord did little to make the rental space suitable for habitation. When the tenant raised concerns about the condition of the rental unit, the tenant alleged that the landlord told the tenant that they should move if they did not like the accommodations. As the tenant considered that the landlord was evicting the tenant, the tenant notified the landlord that they would be vacating the rental unit by the end of December 2018. Neither party issued any type of written notice to end this tenancy.

The tenant said that they stayed with friends for three days at a time, and did some housesitting elsewhere for a week. The tenant said that the landlord was so abusive that it made the tenant anxious and nervous to stay in the rental suite with the landlord living above the tenant. The tenant said that the landlord packed the tenant's belongings and left them outside, as the landlord considered the tenant to have ended the tenancy by the end of December 2018. The tenant asked for a total recovery of the rent they paid for December 2018 due to the landlord's failure to provide them with the full value of the tenancy they had anticipated receiving when the tenant agreed to move into this home.

The tenant gave undisputed sworn testimony that the landlord did not undertake a joint move-in or joint move-out inspection of this rental space.

The tenant said that the only written notification that they had given to the landlord of their forwarding address was by way of the address they included in their written evidence for this hearing.

Although the tenant's written evidence and application referenced broken eyeglasses that the tenant suffered as a result of an alleged altercation initiated by the landlord, the tenant understood that any claim for broken eyeglasses could not be made through the *Act*.

The tenant said that the landlord damaged one of the tenant's mirrors during the packing of the tenant's belongings. The tenant has not replaced that mirror and said that it likely was valued at about $20.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord contravened the *Act*, the *Regulation* or their agreement and that they are entitled to a monetary award from the landlord for the monetary claim submitted.

Based on the undisputed sworn testimony of the tenant, I find that this tenancy does fall within the jurisdiction of the *Act*. I also note from the tenant's written evidence that both parties agreed that this was a tenancy that was subject to the rules set out in the *Act*.

I should also note that neither party acted accordingly in issuing a written notice to end this tenancy. The tenant believed that the landlord had given them a legal eviction notice by text message. While the landlord appears to have accepted the tenant's oral notice that they were not planning to remain in this tenancy beyond December 31, 2018, the landlord proceeded to act as if the landlord had received a valid notice to end tenancy from the tenant. The landlord did not issue a written notice to end this tenancy on an approved and required Residential Tenancy Branch form, nor did the landlord apply for an Order of Possession. The landlord did not obtain a Writ of Possession from the Supreme Court of British Columbia, nor did the landlord use a court appointed bailiff to evict the tenant and bar the tenant's access to the rental unit. As such, I find that this tenancy ended on December 31, 2018, when the landlord took action to remove the tenant's belongings from the rental unit to make way for a new tenant the landlord had secured for this basement space. As the landlord took this action without the legal authority to do so, I make no order requiring any offsetting of the monetary award issued in the tenant's favour against rent that would otherwise have been owing for January 2019, had the landlord acted in accordance with the *Act*.
Section 32 of the Act reads in part as follows:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 28 of the *Act* reads in part as follows:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." In this case, based on the tenant's undisputed sworn testimony and written evidence, I find that there has been a reduction in the value of this tenancy by the landlord's failure to provide the tenant with a clean and sanitary place to reside free from unreasonable disturbance and significant interference.

While I accept that the landlord has contravened sections 32(1) and 28 of the *Act,* I do not find that the tenant is entitled to recover all of the rent paid for December 2018, the only month of this tenancy. The tenant did reside there, left their belongings there for that month, and although they chose to stay elsewhere for some of the time during that month, the situation was not so dangerous or unhealthy that the tenant could not have

remained residing there for the entire month of December. Staying with friends and housesitting may very well have been options that the tenant would have undertaken with or without disturbance from the landlord. As I do accept that there is sufficient evidence that the premises were not cleaned to a satisfactory level at the beginning of this tenancy and that there was some loss in value of this tenancy resulting from the landlord's actions, I allow the tenant a retroactive reduction in rent of $200.00 for the one month of this tenancy.

As the tenant has supplied insufficient evidence to demonstrate entitlement to a monetary award for broken glasses or a damaged mirror, I dismiss these elements of the tenant's application without leave to reapply.

As the tenant has been successful in part of this application, I allow the tenant to recover their $100.00 filing fee from the landlord.

Sections 23 and 24 of the *Act* establish the rules whereby joint move-in condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

> ***23*** *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(4) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
>
> *(6) The landlord must make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (3), and*
>
> *(b) the tenant does not participate on either occasion...*

Section 24(2) of the *Act* reads in part as follows:

> **Consequences for tenant and landlord if report requirements not met**
>
> ***24*** *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> *(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*
>
> *(b) having complied with section 23 (3), does not participate on either occasion, or*
>
> *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Sections 36 and 37 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord(s) regarding that inspection.

In this case, the tenant gave undisputed sworn testimony that the landlord did not undertake a joint move-in condition inspection with the tenant when this tenancy began. As such, the tenant advised that no report of a joint move-in condition inspection was prepared and provided to the tenant. On the basis of this undisputed sworn testimony that has a direct bearing on the tenant's application for a return of their security deposit, I find that the landlord's right to apply to retain the tenant's security deposit was extinguished at the beginning of this tenancy.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing as long as the landlord's right to apply to retain the deposit had not been extinguished. If that does not occur or if the landlord applies to retain the deposit within the 15 day time period but the landlord's right to apply to retain the tenant's deposit had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* that is 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 deposits to offset damages or losses arising out of the tenancy.

In this case, I find that the tenant has not yet provided the landlord with a separate notification in writing of the tenant's forwarding address where the landlord must return the tenant's security deposit. The tenant's inclusion of their forwarding address as part of the dispute resolution hearing package or as part of the written evidence for consideration as part of the current application does not meet the requirements of section 38 of the *Act.*

As stated at the hearing, I find that the tenant's application for a return of their security deposit is premature as they have not yet provided their forwarding address in writing to the landlord for the purpose of obtaining a return of their security deposit. As I find that the landlord's right to claim to retain any portion of the tenant's security deposit has been extinguished, the landlord has 15 days after receipt of the tenant's forwarding address in writing to return the tenant's security deposit in full. If that does not occur, the tenant is at liberty to apply for a monetary award equivalent to double the value of that deposit, as well as recovery of the filing fee for that application for dispute resolution.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $300.00, which allows the tenant a monetary award for the loss in value of their tenancy and for the recovery of their filing fee. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application to seek a return of their security deposit with leave to reapply. This part of the tenant's application is premature since the tenant has not provided the landlord with their forwarding address in writing. The tenant may reapply for the return of double their security deposit in the event that the landlord does not return their security deposit in full within 15 days of the landlord's receipt of or deemed receipt of the tenant's forwarding address in writing.

I find that the landlord's right to apply to retain the tenant's security deposit has been extinguished. I also find that this tenancy ended on December 31, 2018, when the landlord removed the tenant's possessions from the rental unit without legal authorization to do so.

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 05, 2019

Residential Tenancy Branch