Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on September 23, 2019. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act (*the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for double the security or pet deposit.

Both sides were present at the hearing. Both Landlords were present, as was an agent for the Tenant. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Landlords stated that the Tenant's application should not have listed the Landlord's real estate company, as that is not who the Tenancy Agreement was with. The Landlords both clarified that it should have listed G.R., and A.R. personally, without any reference to the company. I confirmed that these were the names listed on the Tenancy Agreement, and the Landlords were both present and agreed to proceed with the hearing, and to amend the Tenant's application to reflect their personal names.

The Landlords acknowledged getting the Tenant's evidence and Notice of Hearing package. The Landlords stated they sent their evidence by registered mail to the Tenant on September 8, 2019. Tracking information was provided to verify that this evidence was sent to the Tenant's address he had listed as the address for service on his application. Although the Tenant's agent stated she did not get the evidence, I find the

Tenant is deemed served with the Landlords' evidence, 5 days after it was mailed (September 13, 2019), pursuant to section 88 and 90 of the Act.

I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Tenant entitled to double the security deposit, pursuant to section 38 of the Act?
2. Is the Tenant entitled to a monetary order for damage or loss under the Act?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

Both parties agree that the Tenant moved into the rental unit around May 1, 2016. The Landlords collected a security deposit in the amount of $1,050.00. The Tenant moved out of the rental unit around May 8, 2019, which is the same date that the parties met and attempted to do a move-out condition inspection, although this inspection was contentious and dysfunctional. The Tenant had his agent attend the inspection on his behalf, and during the move-out inspection, the parties disagreed with the characterization of the rental unit.

The Landlords assert that the Tenant's agent left after they did a walk through, and took the move-out inspection report to her vehicle to view it. The Landlords stated that the Tenant's agent never returned with the signed report, and they didn't get a copy back until they were served with the Tenant's evidence for this hearing. In contrast to this, the Tenant's agent says she returned the move-out inspection report (the report) to the Landlords the same day of the inspection, May 8, 2019. The Tenant stated she does not have any direct evidence showing she returned the report.

The Landlords stated that the Tenant gave his Notice to End Tenancy at the end of April, and it took effect at the end of May. The Landlords stated that the Tenant was responsible for rent for this period, as well as the utilities (as per the tenancy agreement provided into evidence). The Landlords stated that although he did pay for rent, the Tenant did not pay for all utilities up until the end of May 2019, so he owed them $39.75 for an unpaid gas bill for the duration of May (after he had moved out, but was still liable

under the agreement). The Landlords stated that they deducted this amount from the deposit, and returned $1,010.25, by mailing a cheque to the Tenant on May 14, 2019. The Landlord later corrected herself and stated that it was not May 14, 2019, but was June 14, 2019. The Tenant's agent confirmed that the Tenant received this amount, and cashed it on June 21, 2019.

The Landlords stated that they never actually got the Tenants forwarding address in writing. The Landlords stated they never got the condition inspection report back after letting the Tenant's agent view it in her car, and they never got the forwarding address in writing which was at the bottom of this report. The Tenant's agent provided a copy of the email the Tenant sent to the Landlord's email address, which requested the return of the deposit and provided the Tenant's forwarding address in writing. The Landlord denies getting this email or the text message the Tenant provided a copy of. The Landlords did not explain how they were able to mail back part of the Tenant's security deposit if they did not receive the Tenant's forwarding address in writing.

The Tenant's agent stated she would have no reason not to give back the move-out inspection report, as she signed it, disagreed with it, and expected the deposit to be returned to the address she put at the bottom of the report.

The Tenant's agent stated the Tenant did not agree to any deductions from his deposit, and was expecting his full deposit returned to him after the move-out inspection. The Landlord did not explain or provide any evidence to show that they had come to an agreement with the Tenant with respect to retaining the amount of the gas bill from the deposit they held.

The Tenant is also seeking to recover the filing fee for this application, the cost of registered mail, and the costs to clean the carpets ($189.00), totalling $304.00.

The Landlord stated that, as per the Tenancy Agreement provided into evidence, the Tenant agreed to steam clean the carpets at the time he moved out. The Tenant's agent stated she did not have a copy of this agreement, but does not deny that the Tenant signed it. The Tenant states she paid for the carpets to be cleaned, and now wants this amount back because she feels the Tenant should not have to pay for this item.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

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

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the consistent evidence is that the Tenant moved out around May 8, 2019, the same day the move-out inspection was done with the Tenant's agent. Although the Tenant may have still been responsible for paying rent and utilities until the end of May, due to the fact he did not give Notice until the end of April, I find the tenancy ended on May 8, 2019, as this is the date he was moved out by and the date the move-out inspection was done. I note the Landlords stated they never got the Tenant's forwarding address in writing. However, it strikes me as odd how the Landlord could have returned, by mail, a cheque for the return of the security deposit (less the outstanding gas bill) without having received the Tenant's forwarding address. The Landlord's testimony was unlcear on this point.

The Tenant's agent stated she gave the Landlords a forwarding address by way of the move-out condition inspection report, and also by text and email on June 1, 2019. Although the Landlord denies getting the address through any of these means, it remains unclear how the Landlord got the Tenant's forwarding address, if they didn't receive the address by any of these methods, as they have stated. I find this inconsistency and irregularity leads me to question the reliability of the Landlord's statements on this issue. As such, I have placed more weight on the Tenant's agent's version of events, as it was more logical, detailed, and compelling. I find it more likely than not that the Tenant's agent provided a forwarding address to the Landlord by way of the move-out portion of the condition inspection report on May 8, 2019. I find it more likely than not that the Tenant's agent left this report and the Landlord received the Tenant's forwarding address on this date.

Furthermore, I note the Landlord returned $1,010.25, by mailing a cheque to the Tenant on June 14, 2019. However, I note this was not the full amount of the security deposit, which was $1,050.00. I further note there is no evidence the parties had agreed to this deduction from the deposit. In the absence of an agreement regarding the deduction, the Landlords were required to either file an application for dispute resolution to claim against the deposit or return the deposit, in full, within 15 days of getting the Tenant's forwarding address. Regardless of whether or not the Landlord received the Tenant's forwarding address on May 8, 2019, or sometime in early June, it is clear the Landlord had the Tenant's forwarding address, as they utilized this address to return *part* of the deposit on June 14, 2019. Since the Landlords did not return the full amount of the deposit, and still haven't, I find they breached section 38(1) of the Act.

Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord (2x$1,050.00=$2,100.00) less the amount already returned ($1,010.25) pursuant to section 38(6) of the *Act*. This amounts to $1,089.75.

Next, I turn to the Tenant's remaining items. I find the Tenant is not entitled to the recover of the cost for registered mail. Each party is responsible for these costs as part of the proceeding. I also find the Tenant is not entitled to recover the cost to clean the carpets, as this was something the Tenant stated he would do prior to moving out, as per the tenancy agreement.

Pursuant to section 72 of the Act, and given the Tenant's was mostly successful in this application, I award him recovery of the filing fee ($100.00) he paid for this application.

Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of $1,189.75, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and $100.00 in recovery of the filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of $1,189.75. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: September 23, 2019

Residential Tenancy Branch