Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* (*"Act"*). The tenant applied for the return of double their security deposit, for the return of May 2019 rent, and to recover the cost of the filing fee.

The tenant, a witness for the tenant DC ("tenant witness"), the landlord and a support person for the landlord JM ("support person") appeared at the teleconference hearing and were affirmed. The hearing process was explained to the parties and the landlord was asked whether JM was a witness or a support person. I explained clearly to the landlord that JM could not be both a witness and a support person, because as a support person, they would have tainted testimony as they would have heard all of the testimony and evidence presented so the landlord had to decide on JM's role at the start of the hearing. The landlord stated clearly that JM would be a support person and at the time, I advised the landlord that JM was permitted to remain in the room with the landlord and would not be a witness.

During the hearing the tenant and landlord provided testimony. In addition, the tenant referred to various documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The first issue I will deal with is service as the landlord stated that they were not served with the tenant's application or any other documents. The tenant testified that the landlord was served at their address, which the landlord confirmed to be correct, by registered mail on July 5, 2019 and was addressed to the landlord. The tenant also

testified at the start of the hearing before the landlord called into the hearing five minutes late, that the landlord refused the registered mail package and ultimately the package was marked as “refused” and was returned to the tenant. The landlord stated that they were aware of the hearing based on an email and that a copy of the Notice of Dispute Resolution Proceeding (“Notice of Hearing”) was all the information they had. The registered mail tracking number has been included on the cover page of this decision for ease of reference. After reviewing the Canada Post registered mail tracking website, the parties were advised that I was satisfied that the landlord refused the registered mail package, as I find the Canada Post tracking information to be compelling, and the landlord confirmed that the mailing address matched where the landlord continues to reside. I also note that I find it highly unlikely that a package would be marked “refused” unless the recipient attended the post office and refused the package, versus not attending the post office at all, and the package would be returned to sender without being marked as “refused”.

Secondly, I must deal with jurisdiction under the *Act* as the landlord claims that although a written tenancy agreement did not exist, the tenant agreed verbally to sharing the only working stove in the duplex, yet monthly rent was $1,300.00 per month. The tenant vehemently denied that the landlord mentioned anything about sharing the tenant’s stove. The landlord testified that they live in a remote area and that the landlord’s stove has not been working for some time and so they are forced to use the stove next door in the duplex they rent. The landlord also testified that they own the duplex, which the tenant did not dispute.

Section 4(c) of the *Act* states:

> **What this Act does not apply to**
>
> **4** This Act does not apply to
>
> (c) living accommodation in which the tenant **shares bathroom or kitchen facilities with the owner of that accommodation**
>
> [Emphasis added]

There is no dispute that a written tenancy agreement does not exist between the parties. What is in dispute is whether the verbal agreement between the landlord and tenant included a term whereby the tenant agreed to the landlord sharing the stove of the rental unit. The landlord claims the tenant agreed, and the tenant vehemently

disagreed and stated that the stove was never mentioned, so the tenant was surprised to hear of this at the hearing. Firstly, I find the landlord breached section 13(1) of the *Act* which states:

> **Requirements for tenancy agreements**
>
> **13** (1) **A landlord must prepare in writing every tenancy agreement entered** into on or after January 1, 2004.
>
> [Emphasis added]

I find that by failing to have a written tenancy agreement, and with the parties disputing whether the stove was to be shared by the landlord, I find that on the balance of probabilities, that it would be unreasonable to charge $1,300.00 per month and have a tenant share their stove with the landlord living next door in a duplex arrangement. What I find more reasonable, is that the landlord would either purchase a new stove or have their stove repaired. As such, I prefer the tenant's version of events over that of the landlord as I find the landlord's version both unreasonable and unsupported by a written tenancy agreement. As a result, I find the *Act* applies and that I have jurisdiction over this matter.

In addition to the above, the parties confirmed their email addresses during the hearing. The parties were advised that the decision would be emailed to them at the email addresses confirmed during the hearing. If the tenant is entitled to a monetary order, it will be emailed to the tenant only for service on the landlord.

Finally, at the outset of the hearing, the parties were advised of expected conduct and that if interruptions occurred during the hearing, a formal caution would be issued to the interrupting party. I note that while both parties were cautioned for interrupting each other and myself during the hearing, the landlord continued to interrupt even after a formal caution to cease interrupting. Although I could have muted the landlord for the remainder of the hearing, I made the decision not to do so to ensure, in the interests of fairness, that both parties had the opportunity to provide their relevant testimony.

At the conclusion of the hearing, the landlord became confrontational when her support person was not permitted to be a witness. The landlord was reminded that at the start of the hearing, almost 50 minutes prior, that the landlord made the decision to have JM be a support person and now that JM had heard all the testimony presented, that JM could not be a witness as JM's testimony would be tainted and of no weight. The landlord

asked why JM was affirmed if he could not testify. All parties, except for legal counsel, are affirmed during a hearing. Legal counsel are not affirmed as legal counsel have already taken the barristers and solicitors oath. It was at this time that the parties were thanked for their participation and for calling into the hearing and at 53 minutes, the hearing concluded.

Issues to be Decided

- Is the tenant entitled to the return of May 2019 rent under the *Act?*
- Is the tenant entitled to the return of double their security deposit under the *Act?*
- Is the tenant entitled to the return of the filing fee under the *Act?*

Background and Evidence

As mentioned above, there is no written tenancy agreement between the parties. The parties did form a verbal tenancy arrangement that began May 1, 2019. The parties agreed that monthly rent was $1,300.00 and was due on the first day of each month. The landlord confirmed that they continue to hold the tenant's $650.00 security deposit, and did not return it as they felt that the tenant moved without proper notice and that the landlord could keep the deposit as a result.

The tenant writes in their application:

> I paid a full months rent in April so I could move in May 1st. When I came for the keys, I saw the suite had not been cleaned (food in fridge, garbage from last tenants, broken furniture, etc), walls were badly beaten up, and the front door didn't latch – not safe. [First name of landlord] agreed to make repairs and reimburse me for the time I waited to move in. May 17th, when our agreement ended, the suite was still not ready, I had not slept a single night in the suite and she kept all of my money.
> [Reproduced as written, except for anonymizing landlord name to protect privacy]

The parties agreed that the tenant moved in a sectional into the rental unit. The tenant originally stated that at the start of May, they wrote to the landlord to request repairs to the rental unit. The tenant presented a May 16, 2019 text that requested some work to be done but did not provide a timeline or indication that they would vacate the rental unit if repairs or other work were not completed. The tenant writes later in the text message that they are happy to take a full refund and end their agreement. There was no written

agreement provided that the landlord agreed to allow the tenant to end their tenancy without proper notice under the *Act.*

Regarding the security deposit, the landlord changed their testimony during the hearing about being served with the tenant's written forwarding address. When the landlord was first asked if the tenant had served their written forwarding address, the landlord stated "I can't recall". Once the tenant called their witness, DC, the landlord stated that the tenant had not served their written forwarding address. Witness DC was affirmed and stated that they witnessed the tenant provide their address to the landlord for the return of the security deposit on what the witness states was "May 17th, I believe". The landlord was given the opportunity to cross-examine the witness and declined to do so. As a result, the witness was excused.

The tenant presented a photograph and a letter in evidence. In the letter, the tenant writes in part that as of May 17, 2019, below is their forwarding address and lists an address, is signed by the tenant, and is addressed to the landlord. In the photograph, the tenant confirmed that the witness and the tenant are standing in front of the landlord's door and that the written forwarding address was affixed to the front door using green painter's tape. The landlord did not refute the authenticity of the letter or the photograph during the hearing. The landlord first stated they could not recall if they were served with the written forwarding address, then later stated they were not served, and then stated that they kept the security deposit as the tenant did not provide sufficient notice to end the tenancy. The landlord confirmed that they have not applied to claim against the tenant's security deposit or for unpaid rent.

Analysis

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

Test for damages or loss

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 what 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 what was reasonable to minimize the damage or losses that were incurred.

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.

May 2019 rent – Section 45(3) of the *Act* states the following:

> **Tenant's notice**
>
> **45**
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the above, I find the tenant has provided insufficient evidence to support that the tenant provided the landlord with written notice of any material term of the tenancy and failed to provide a reasonable period before vacating the rental unit. Therefore, I find that regarding the claim to have May 2019 rent returned to the tenant, that the tenant has failed to meet parts one and two of the test for damages or loss described above. Therefore, I dismiss this portion of the tenant's claim without leave to reapply, due to insufficient evidence.

Security deposit – I find that the tenant has provided sufficient evidence to support that on May 17, 2019, the tenant posted their written forwarding address to the landlord's door. I have reached this finding for the following reasons. Firstly, I find the letter and

photograph to support the testimony of the tenant's witness. Secondly, I find the landlord's testimony was contradictory, which is that the landlord changed their testimony from not being able to recall if they were served with the written forwarding address, to stating they were not served with the written forwarding address.

Section 90 of the *Act* states that documents posted to the door are deemed under the *Act* to be served three days after they are posted. Therefore, I find the landlord was deemed served with the tenant's written forwarding address as of May 20, 2019.

Sections 38(1) and 38(6) of the *Act* apply and state:

> **Return of security deposit and pet damage deposit**
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> **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,**
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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.
>
> (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.**
>
> [Emphasis added]

Based on the above, as I find that the landlord was deemed served with the tenant's written forwarding address as of May 20, 2019, and the landlord has confirmed that they did not return the security deposit and did not make an application to claim against the tenant's security deposit, I find that the landlord breached section 38(1) of the *Act* by failing to return the security deposit in full to the tenant within 15 days of May 20, 2019. Therefore, as the landlord also failed to make a claim against the tenant's security deposit within 15 days of May 20, 2019, I find the tenant is entitled to the return of

double the original security deposit of $650.00 for a total of **$1,300.00**. I note that the tenant's security deposit accrued $0.00 in interest since the start of the tenancy.

As the tenant's application has merit, I grant the tenant the recovery of the filing fee in the amount of **$100.00** pursuant to section 72 of the *Act.*

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **$1,400.00**, comprised of $1,300.00 for the doubled security deposit, plus the $100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **$1,400.00**.

Conclusion

The tenant's application is partly successful. The tenant has established a total monetary claim of $1,400.00 comprised of the return of double their security deposit in the amount of $1,300.00, plus the $100.00 filing fee. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of $1,400.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord not to breach sections 13(1) and 38(1) of the *Act* in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

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: October 8, 2019

Residential Tenancy Branch