Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord gave sworn testimony supported by written evidence that they sent the tenants a copy of their amended dispute resolution hearing package by registered mail to the tenants by registered mail on July 5, 2019. The landlord also entered written evidence that they provided the tenants with a second registered mailing of their written evidence on September 11, 2019. The landlord testified that the first package was returned to the landlord by Canada Post as not having been accepted by the tenants.

The landlord's original application of June 28, 2019 sought a monetary award of $1,513.00. Their amended application increased the amount of the requested monetary award to $4,290.23. The Monetary Order Worksheet entered into written evidence identified $427.23 in unpaid utilities and $2,500.00 in unpaid rent, less the tenants' $1,250.00 security deposit. Although the landlord also included a "List of Expenses" of $1,513.00, none of these items were for unpaid rent or unpaid utilities. Nowhere in the landlord's amended application, did the landlord modify the type of claim sought from

their original application for the recovery of unpaid rent and utilities, plus the recovery of their $100.00 filing fee.

Tenant ML (the tenant) testified that the tenants did not receive the landlord's dispute resolution hearing package, nor had they provided the landlord with their forwarding address at the end of their tenancy. The tenant testified that the first notification that they received about this hearing was by way of a reminder email sent by the Residential Tenancy Branch (the RTB). Although the tenants called into this hearing, they claimed that they were unaware of what had been claimed by the landlord. Suspecting that this application must have involved the rental unit identified in the landlord's application, the tenants entered written evidence into the RTB's Online Service Portal, but did not supply copies of that evidence to the landlord. The landlord confirmed that they had not received any written evidence from the tenants.

In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's dispute resolution hearing package and written evidence five days after these documents were sent to them by registered mail. Since the tenants did not provide the landlord with their written evidence, I have not considered their written evidence as it was not served in accordance with section 88 of the *Act*.

Preliminary Issue - Timing of Application and Jurisdiction to Consider this Application

The landlord paid their $100.00 filing fee to complete their original application for dispute resolution on June 28, 2019. As noted above, they amended their application on July 5, 2019, increasing the amount of their requested monetary award.

The parties agreed that they signed a fixed term Residential Tenancy Agreement (the Agreement) on April 25, 2016, for a tenancy that was to run from July 1, 2016 until June 30, 2017. However, these premises were not ready for occupancy until at least August 1, 2016, and the landlord agreed to alter the commencement date of the Agreement to that date. The tenant gave undisputed sworn testimony that they were not able to actually move into the rental unit until August 5, 2016.

The tenants vacated the rental unit on June 12, 2017. At a scheduled joint move-out inspection of the rental unit on June 15, 2017, the tenants did not attend the rental unit, but left their keys to the rental unit within the premises. The landlord testified that they received the tenants' keys on June 15, 2017 when they attended the rental unit for the joint move-out condition inspection and realized that the tenants had vacated the rental

unit. The landlord said that the tenants retained one set of keys at that time, and returned them the following week. By that time, the landlord had obtained vacant possession of the rental unit, even though the Agreement was to have extended to the end of June 2017.

Section 60 of the *Act* reads in part as follows:

> ***Latest time application for dispute resolution can be made***
>
> ***60*** *(1)If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*
>
> *(2)Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes...*

Under these circumstances, I find that the landlord obtained vacant possession of this rental unit by June 15, 2017 and that the tenants no longer had keys to access this rental unit by at least June 22, 2017. By surrendering their keys to the living area of this rental unit by at least June 22, 2017, and by taking possession of the premises this tenancy ended by that date, and likely by June 15, 2017.

As the landlord did not apply for dispute resolution until June 28, 2019, I find that the landlord's application is beyond the two year time frame established by section 60 of the *Act*. For these reasons I decline jurisdiction to consider the landlord's application.

Even if I am mistaken in my interpretation of my jurisdiction, I note that the landlord's application identified only unpaid rent and utilities, the recovery of their filing fee, and their acknowledgement that they retained the security deposit for this tenancy. None of the other portions of the landlord's amended claim for damage were included in either the landlord's original claim or their amended claim.

With respect to the security deposit for this tenancy, the tenant acknowledged that they had not provided the landlord with their forwarding address in writing within one year of the end of this tenancy. Under such circumstances, I informed the parties that the landlord would be entitled to retain the tenants' security deposit of $1,250.00. The tenant testified that they realized that the landlord was entitled to retain their $1,250.00

security deposit due to their failure to provide the landlord with their forwarding address in writing following the end of their tenancy.

Conclusion

I decline to consider the landlord's application as I lack the jurisdiction 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: October 10, 2019

Residential Tenancy Branch