Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on October 18, 2019 for:

1. An Order for the return of the security deposit; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 15, 2019 for:

1. A Monetary Order for damages - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that the tenancy agreement only names Tenant SS as the tenant and a company as the landlord. The Landlord confirms that for the purposes of the tenancy each of the Landlords named by the Tenants in their application acted as agent for the company and are all directors of the company.

Section 1 of the Act defines “landlord” as including the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i)permits occupation of the rental unit under a tenancy agreement, or

(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Given the undisputed evidence that the Landlords named in the Tenant’s application acted as agents for the company named in the tenancy agreement, I find that the Landlords are properly named as Respondents to the Tenants claims. As only Tenant SS is named as a tenant on the tenancy agreement, I restrict any monetary award that may be determined to Tenant SS.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2016 and ended on September 30, 2019. At the outset of the tenancy the Landlord collected $600.00 as a security deposit and $300.00 as a pet deposit. While the Parties conducted walk throughs, no move-in or move-out condition inspection report was completed by the Landlord. On or about August 27, 2019 the Landlord received the Tenants’ forwarding address with their notice to end tenancy dated. On October 4, 2019 the Landlord returned, by e-transfer, $450.00 to the Tenant from the security and pet deposits. The Tenant deposited the e-transfer some time later.

The Tenants claims return of double the security and pet deposit.

The Landlord states that the Tenants left the unit damaged and claims $4,926.60 as compensation for the damages. The Landlord clarifies that the compensation claim for $900.00 was for the retention of the security deposit and the return of the $450.00

already paid to the Tenant. The Landlord states that a couple of areas of the laminate floor were lifted by water damage, the blinds were damaged where the windows would open, a closet door was off its hinges, and the bottom of the bathroom vanity was ruined. The Landlord provides an estimate of the costs for the damages however no repairs were done. As of October 3, 2019, the sale of the unit to a 3rd party was completed. The Landlord states that the unit was sold at a reduction of approximately $30,000.00 due to the damages to the unit. The Landlord confirms that it provided no evidence of the sale of the unit or evidence to support that a reduced sale price was the direct result of the damages.

The Tenant states that they left no damages in the unit that were not pre-existing or greater than reasonable wear and tear over the length of the tenancy.

Analysis

Section 24 of the Act provides that 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 does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that no move-in inspection was offered or conducted I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at the onset of the tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. RTB Guideline #17 provides that in determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- any arbitrator's monetary order outstanding at the end of the tenancy;

- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

As the Landlord's right to claim against the security deposit was extinguished and given the undisputed evidence that the Tenants forwarding address was provided prior to the end of the tenancy I find that the Landlord's was required to return the full security and pet deposits within 15 days of the end of the tenancy. As the Landlord failed to do this and as the Tenant could not provide written authorization for any deduction, I find that the Landlord must now pay the Tenant double the combined security and pet deposit plus zero interest of **$1,800.00**. As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$1,900.00**. Deducting the **$450.00** already paid to the Tenant leaves **$1,450.00** owed by the Landlord to the Tenant SS.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of a move-in condition report setting out the state of the unit and the Tenants evidence that the Landlord's claims of damages were only for pre-existing damage or reasonable wear and tear, I find on a balance of probabilities that the Landlord has not substantiated that all the damages claimed were caused by the Tenant. Further, The Landlord did not incur any costs for repairs. The Landlord's evidence that it lost money on the sale of the unit is not supported. For these reasons, I find that the Landlord has not substantiated its monetary claims. I therefore dismiss the Landlord's claims for damages and compensation. As the Landlord has not been successful with

its claims, I dismiss the Landlord's claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **$1,450.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 17, 2020

Residential Tenancy Branch