Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking $1,938.20 in compensation including:

- $1,645.00 for double the amount of their security deposit;
- The return of $193.20 in unlawful deductions from their security deposit; and
- Recovery of the $100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and Agents for the Landlord (the "Agents"), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority

delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Preliminary Matter #2

During settlement discussions the Tenant mentioned wanting to recover the cost associated with printing/photocopying documents and serving documents by registered mail. However, as stated above, a settlement agreement was not reached and I proceeded with the hearing of the Tenant's Application, as filed, under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Rule 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the Application for Dispute Resolution unless the arbitrator allows a party to amend the application. In their Application the Tenant did not seek recovery of the costs associated with printing/photocopying documents or serving documents by registered mail. Although rule 4.2 of the Rules of Procedure allows an arbitrator to amend an application in the hearing, this process is reserved for circumstances that can reasonably be anticipated by the respondent, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. I do not find it reasonable to amend the Tenant's Application in this circumstance pursuant to section 4.2 of the *Act* as I do not find that the Landlord would have had any reasonable expectation that the Tenant planned to claim for these amounts prior to the hearing and would therefore have had no opportunity to respond to these claims. Further to this, As the Tenant served the Landlord with copies of their documentary evidence and the Notice of Dispute Resolution Proceeding by registered mail on December 31, 2020, I find the Tenant had more than enough time to have filed an amendment to their Application seeking these costs, should they have wished to do so.

As a result, I declined to Amend the Tenants Application and the hearing proceeded based only on the claims made by the Tenant in their Application.

Issue(s) to be Decided

Is the Tenant entitled to the return of all, a portion, or double the amount paid as a security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that several fixed-term tenancy agreements had been entered into between the Tenant and the Landlord since the Tenant moved into the rental unit in either 2015 or 2016, and the Tenant provided copies of the last two agreements for my review. The first tenancy agreement in the documentary evidence before me (the 2017 agreement) is a fixed-term tenancy agreement with a vacate clause, beginning on January 1, 2017, and ending on December 31, 2017. The Tenancy agreement states that rent in the amount of $1,680.00 ($1,645.00 for rent and $35.00 for storage) is due on the first day of the month and that $822.50 was paid as a security deposit. The parties agreed that these terms were correct.

The second tenancy agreement in the documentary evidence before me (the 2018 agreement) is also a fixed-term tenancy agreement with a vacate clause, beginning on January 1, 2018, and ending on December 31, 2019. The tenancy agreement states that rent in the amount of $1,760.00 ($1,710.00.00 for rent and $35.00 for storage) is due on the first day of the month and that $855.00 is to be paid as a security deposit. The parties agreed that the Tenant did not vacate the rental unit between the 2017 and 2018 agreements and that other than the rent and storage fee amounts, there were no material changes to the tenancy. The parties also agreed that the $855.00 security deposit due under the 2018 agreement was never collected and that the $822.50 security deposit paid for the 2017 agreement was not repaid to the Tenant when they entered into the 2018 agreement.

The Agents for the Landlord stated that the $855.00 security deposit listed in the 2018 agreement was not collected due to the legislative change that occurred in December of 2017, prohibiting the majority of vacate clauses, and that the 2017 agreement essentially continued on a month to month basis. The Tenant disagreed, stating that they were required to pay the increased rent due under the second tenancy agreement without being served a proper Notice of Rent Increase as required under the *Act* and that they therefore believe that this was a separate tenancy. As a result, the Tenant argued that the $822.50 security deposit should have been returned to them at the end of the first tenancy agreement noted above. In any event, the Tenant stated that the security deposit should also have been returned in full when they vacated the rental unit in July of 2018, but was not.

The parties agreed that the Tenant vacated the rental unit on July 31, 2018, having given one month’s written notice to do so, and that the Tenant provided their forwarding address to the Landlord in writing on that date, by way of including it on the move-out

condition inspection report. The parties also agreed that at the time the tenancy ended, the Landlord held the $822.50 security deposit paid to the Landlord in 2017, $629.30 of which was returned to the Tenant on August 8, 2018.

The Tenant stated that there was never any agreement for the Landlord to withhold or deduct any amount from their security deposit. Further to this, the Tenant stated that the Landlord never completed a proper move-in condition inspection or move-in condition inspection report in compliance with the *Act* or regulations during any of their tenancies. The Tenant stated that an agent for the Landlord never inspected the rental unit with them and that they were always given a blank condition inspection report and asked to complete and return it. As a result, the Landlord extinguished their rights in relation to the security deposit pursuant to section 24 (2) of the *Act.* In support of this testimony the Tenant pointed to a condition inspection report in the documentary evidence before me, which contains details of the move-out inspection on July 31, 2018, but states “NOT DONE” in the sections of the report pertaining to move-in.

The Agents stated that the Landlord’s practice is to have agents complete condition inspections in compliance with the *Act* and regulations but acknowledged that they cannot speak reliably to what occurred with the Tenant as the agent who completed their inspections is no longer employed by the Landlord. The Landlord’s did not submit any condition inspection reports for my review.

The Tenant stated that the Landlord withheld $193.20 from their security deposit without their consent or authority under the *Act* to do so. The Tenant stated that there was never any agreement for the Landlord to withhold any portion of their security deposit. In support of this testimony the Tenant pointed to sections 1 and 2 of the condition inspection report for the end of the tenancy, which they argued clearly shows that there was no damage and that no deductions were agreed to. Further to this, the Tenant stated that the agent for the Landlord added comments under section z relating to damage to the stove without their consent after the agreement was signed.

The Agents denied that the agent who signed the condition inspection report altered it after it was signed or without the Tenant’s consent. The Agents also denied that the Landlord withheld the $193.20 without agreement. Although the Agents did not submit copies of any emails for my review, they referred to two emails dated July 13 and July 14, 2018, in which they state the Tenant stated they would file a claim with their insurance provider regarding the damage depending on the amount and that the building was entitled to file any claim they deemed necessary in relation to claims for damage to the rental unit.

The Tenant agreed that there was email correspondence with an agent for the Landlord in relation to damage and the withholding of funds from the security deposit but stated that these emails do not amount to an agreement that the Landlord could withhold $193.20 from their deposit as the Tenant was simply responding to emails from the agent advising them that funds were being withheld and that even by the Agents own admission in the hearing, they were advising the Landlord that they needed to make a claim from any portion of the deposit they wished to deduct.

As a result of the above, the Tenant argued that they are entitled to the return of double their security deposit amount as the Landlord neither repaid their security deposit in full at the end of the 2017 or the 2018 tenancy nor filled a claim against the security deposit, within 15 days after July 31, 2018, the date upon which the tenancy ended and the Landlord was provided the Tenant's forwarding address in writing. The Tenant stated that they are also entitled to the return of the $193.20 withheld by the Landlord and recovery of the $100.00 filing fee.

The Agents denied that the Tenant was entitled to double the amount of their security deposit or the return of the $193.20 witheld, as they believe that the Landlord was entitled to withhold the $193.20 and that the balance of the Tenant's security deposit was returned to them on August 8, 2018, well within the 15 days required by the *Act*.

Analysis

The parties agreed that several fixed-term tenancy agreements had been entered into between the Tenant and the Landlord since the Tenant moved into the rental unit in either 2015 or 2016. The parties agreed that the Tenant vacated the rental unit on July 31, 2018, and that the Tenant provided their forwarding address to the Landlord in writing on that date, by way of including it on the move-out condition inspection report. The parties also agreed that at the time the tenancy ended, the Landlord held an $822.50 security deposit paid to the Landlord in 2017.

Although the Agents for the Landlord argued that there was agreement for the Landlord to deduct $193.20 from the Tenant's security deposit, I disagree. The move-out condition inspection report contains a section specifically for the purpose of agreeing on an amount that may be deducted from the Tenant's security deposit. In the move-out condition inspection report completed by the Tenant and an agent for the Landlord on July 31, 2018, no amount is listed. Instead, that section states "No damage – security deposit to be returned". Although the Agents also referenced two emails, neither email was provided for my review and the details provided by the Agents in relation to the

emails do not, in my opinion, amount to any form of agreement by the Tenant for the Landlord to withhold any portion of the security deposit.

Based on the above, I find that the Landlord was obligated to either return the security deposit to the Tenant, in full, or file an Application for Dispute Resolution with the Residential Tenancy Branch seeking authorization to withhold all or a portion of the deposit by August 15, 2018. Although the parties agreed that $629.30 was returned on time, there is no evidence that the Landlord filed an Application seeking to retain the remaining portion of the Tenant's security deposit and I have already found above that there was no written agreement for the Landlord to retain any portion of the Tenant's security deposit. Further to this, I am not satisfied that a move-in condition inspection or report were completed by the Landlord or their agent in compliance with the *Act* and regulations, and as a result, I find that the Landlord extinguished their right to claim for damage against the security deposit pursuant to section 24 (2) of the *Act*.

Based on the above, I find that even if an agreement had existed for the Landlord to retain a portion of the Tenant's security deposit, they were prohibited from doing so pursuant to section 38 (5) of the *Act*. As a result, I find that the Tenant was entitled to the return of their full security deposit in the amount of $822.50 by August 15, 2018; 15 days after the date the Tenant moved out and the Landlord received the Tenant's forwarding address in writing.

Although the Landlord returned $629.30 of the security deposit to the Tenant on August 8, 2018, I find that they retained $193.20 without authority to do so under the *Act*. As a result, and pursuant to section C. 5 of Residential Tenancy Policy Guideline # 17, I find that the Tenant is entitled to $1,015.70; double the amount of their security deposit, ($822.50 x 2 = $1,645.00), less the $629.30 already returned.

Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to recover the $100.00 filing fee.

As a result, the Tenant is therefore entitled to a Monetary Order in the amount of $1,115.70.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,115.70. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 20, 2020

Residential Tenancy Branch