Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNDC MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 27, 2020. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "*Act*").

The Landlord attended the hearing. The Tenant also attended the hearing. The Landlord acknowledged receipt of the Tenant's application package and evidence. The Tenant provided her registered mail tracking information to support that she served this package.

The Tenant acknowledged receipt of the Landlord's evidence package by mail but stated she never got any of the Landlord's Notice of Hearing. During the hearing, the Landlord provided conflicting versions of what he served, and when. He initially stated that he posted the Notice of Hearing to the Tenant's door but then stated that he sent it by mail. The Landlord explained that he sent 3 different items to the Tenant. Then, after several minutes of trying to clarify what was served and when, the Landlord finally stated that he sent "everything" in one package, by registered mail, on October 15, 2019. The Landlord was asked for proof of service but was unable to provide any registered mail tracking information. The Tenant denies that she got the Landlord's Notice of Hearing, and stated she only received the same 13 pages (of evidence) that I had listed off in the hearing.

I note the Landlord changed his story a couple times but eventually stated he served the Tenant with "everything" in one package. In contrast to this, the Tenant stated she only got the evidence package, and the Notice of Hearing was not in the package. The Tenant was able to clearly articulate what documents were in the package she received. When comparing these two versions of events, I find the Tenant provided a more

consistent and detailed explanation as to what she received, and when. As such, I have placed more weight on the Tenant's statements on this matter, and I find it more likely than not that the Landlord failed to include the Notice of Hearing in the package he sent to the Tenant. It appears the Landlord only served his evidence and not the Notice of Hearing. I find this is problematic because a person who makes an application for dispute resolution must serve the other party with the Notice of Hearing because it shows exactly what is being sought, and why. Without this, it is difficult to discern what the evidence relates to.

Further, I also note the Landlord stated he sent the Notice of Hearing by registered mail on October 15, 2019. However, I note that he did not file his application with our office until November 25, 2019. In other words, his Notice of Hearing did not exist at the time he says he served it. Ultimately, I find the Landlord has sufficiently served his *evidence*, as this was acknowledged as received by the Tenant. However, I do not find the Landlord has sufficiently demonstrated that he served the Tenant with his Notice of Hearing. As such, his application is dismissed, without leave.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to the return of the security deposit held by the Landlord?
- Is the Tenant entitled to a monetary order for damage or loss under the Act?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

In the hearing, both parties agreed that monthly rent was $2,125.00, and was due on the first of the month and the Landlord still holds a deposit in the amount of $2,000.00.

The Landlord stated he collected more than a half month's rent for the security deposit because he rented the unit partially furnished, whereas the Tenant stated that it was $2,000.00 because it included a pet deposit. The tenancy agreement does not mention anything about a pet deposit.

A copy of the tenancy agreement was provided into evidence. However, several issues with this document were raised. The agreement consists of a typed document with 53 different terms. The typed document has several blank spots where amounts and dates could be filled in such as how much monthly rent was, how much the deposit was, and when the tenancy was set to start.

Both parties confirmed that the Tenant picked up the typed tenancy agreement from the Landlord, and at that time, it consisted of only the typed terms, and did not have any writing on it. The Tenant acknowledged that she signed the typed tenancy agreement, and at the time she signed it, none of the blanks were filled in (rent, security deposit amount, dates etc). The Tenant stated that after she signed it, she sent a family member to deliver the signed agreement to the Landlord so that he could also sign it. The Tenant did not state whether or not her family member was acting as her agent to negotiate the terms further. The Tenant stated that her family member took the signed agreement, and wrote in a couple of terms in the margins of the document, and she did this prior to the Landlord signing it.

The Landlord stated that these extra terms, in handwriting, were not there when he signed the document, and none of them have his initials next to them. The most critical of these items was one regarding pets as this is what the parties disagreed upon. The typed tenancy agreement provided into evidence shows the following:

3. No animals are allowed to be kept in or about the Property. (small dog (Lowie) is ok as agreed with landlord).
4. Subject to the provisions of this Lease, the Tenant is entitled to the use of parking on or about the Property.

The Landlord denies ever seeing this term, and said there is no way he would allow the Tenant to have a pet, as he knows the strata does not allow dogs. The Landlord stated that this is why term #3 was in there in the first place (no pets). The Tenant stated that she had a conversation with the Landlord and he said her small dog was okay, which is why her family member wrote it in after she signed it. The Landlord denies that any such agreement was made.

The Tenant moved into the building at the end of August 2019, and problems began early in September 2019 when it became apparent the Tenant had a dog in the rental unit. After unsuccessful discussions between the Landlord, building management, and the Tenant regarding the Tenant's dog, the Landlord issued a 1 Month Notice to End Tenancy, which the Tenant received on September 24, 2019. The Tenant stated she moved out on September 30, 2019, which the Landlord does not refute.

The Tenant stated that she sent her forwarding address in writing to the Landlord by registered mail on October 18, 2019. The Landlord acknowledges receiving this but was unclear when. The tracking information shows the Landlord received this letter on October 21, 2019. The Landlord did not return the deposit, and did not file an application against the deposit until November 25, 2019.

The Tenant is seeking double her deposit back because the Landlord failed to return the deposit or file against it within 15 days of getting her forwarding address in writing. The Tenant is also seeking moving costs which amounted to $800.00. The Tenant feels she is entitled to this because she was told she could have a dog, but found out after she moved in that she couldn't, which forced her to move.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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. The Tenant must also 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.

I first turn to the issue regarding the disputed tenancy agreement term pertaining to pets. More specifically, I note the parties disagree with respect to whether or not the Tenant was allowed to have a dog. I have considered the totality of the testimony and evidence on this matter. I note the Tenant acknowledges that when she signed the tenancy agreement, prior to returning it to the Landlord for him to sign, some of the blanks were not filled in. Some of these blanks were items such as rent amount, deposit amount, start date. However, I note the term (#3) regarding pets did not have any fillable blank spots and was explicit in that no pets were allowed.

I note that, at the time the Tenant signed the agreement, it did not have any terms allowing her to have a dog contained within the document and it appears the Tenant's family member added the above noted clause about her dog after the Tenant had signed it. Regardless of whether or not the Tenant's family member added this term in before the Landlord reviewed it and signed it, I find the addition of the term, subsequent to the Tenant signing it, is problematic.

By her own admission, at the time the Tenant signed the agreement, it did not have any handwritten terms. Which means that when she signed the document, it stated that no animals are allowed. In the absence of sufficient clear evidence showing the Tenant's family member had the authority to act as her agent and further negotiate terms, I do not find the Tenant's family member should have added any terms after the Tenant signed it, especially given they are totally contradicting what the initial term stated. The Tenant should have re-signed or initialled the changes to the document or had an authorized agent do so on her behalf, given they are material modifications to the pre-existing written term. The Landlord also should have initialled this item to show it was a true meeting of the minds, given it differed so much from the initial term.

As such, I find the hand-written term, allowing the tenant to have a dog, is not an enforceable additional term, as there is insufficient evidence there was a meeting of the minds between the Tenant and the Landlord on this matter. I also find the Tenant has not sufficiently demonstrated that the handwritten term, allowing pets, was present and on the document at the time the Landlord signed it, as this conflicting term was not initialled after it was added in. I find the tenancy agreement the Tenant signed did not allow for dogs.

I turn to the Tenant's claim for moving expenses. I do not find the Tenant is entitled to any moving expenses, as there is insufficient evidence to show the tenancy agreement included an enforceable term allowing dogs. As such, there is insufficient evidence to show the Landlord is responsible for the tenancy ending, due to the presence of a dog in the rental unit. I dismiss this item, in full, without leave.

Next, I turn to the Tenant's claim for double her security deposit. 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, both parties confirmed that the Tenant moved out of the rental unit on September 30, 2019, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenant's forwarding address in writing but was unclear when. The Tenant provided proof of mailing, showing she sent it to the Landlord on October 18, 2019, by registered mail. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed served with the Tenant's forwarding address in writing on October 23, 2019, the fifth day after its registered mailing.

There is no evidence that the Tenant authorized any deductions from the security deposit. There is also no evidence to suggest that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until November 7, 2019) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord didn't return the deposit of $2,000.00 and did not file his application against the deposit until November 25, 2019. As such, I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit ($2,000.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the $100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for $4,100.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

The Tenant is granted a monetary order pursuant to Section 38 and 67 in the amount of **$4,100.00**. This order must be served on the Landlord. If the Landlord fails 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: April 2, 2020

Residential Tenancy Branch