Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the return of their security deposit, for a monetary order for compensation for my monetary loss or other money owed and to recover their filing fee. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord testified that they had received the Tenant's documentary evidence that I have before me. The Tenant testified that they had not received the Landlord's documentary evidence. The Landlord testified that they had sent their documentary evidence to the Tenant by registered mail. However, they were not able to prove a tracking number to prove service during this proceeding. Due to this, the Landlord was advised that their documentary evidence would not be considered in my Decision.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to monetary compensation under the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on June 1, 2019, as a month to month tenancy. Rent in the amount of $1,200.00 was to be paid by the first day of each month and that the Tenant paid the Landlord a $600.00 security deposit (the "deposit") at the outset of this tenancy. It was also agreed that the Tenant moved out of the rental unit on October 31, 2019. The Landlord testified that they did not complete the written move-in or move-out inspection for this tenancy.

Both parties agreed that the Tenant provided the Landlord with their forwarding address by registered mail, sent on November 12, 2019, and that at no time had the Landlord been given written permission by the Tenant, to keep the deposit. The Landlord and the Tenant testified that the Landlord had returned $450.00 of the $600.00 deposit to the Tenant by Canada post mail, sent on November 19, 2019.

The Landlord testified that they had informed the Tenant, by text message of the reasons why they were keeping $150.00 of the deposit. The Landlord testified that as of the date of this hearing, they had not filed an Application for Dispute Resolution claiming against the deposit.

The Tenant testified that the rental unit had been provided to them in an unclean state at the beginning of the tenancy. The Tenant is claiming to recover $130.20 in cleaning cost, to have the rental unit cleaned at the beginning of this tenancy.

The Landlord testified that the Tenant had never advised them that they wanted extra cleaning at the beginning of the tenancy or had they asked them to pay for the cleaning that had completed before the tenancy ended. The Landlord testified that the tenant should have advised them of the need cleaning at the beginning of the tenancy and at least before the tenancy ended.

When asked by this Arbitrator, the Tenant testified that they had not communicated to the Landlord that the rental unit required additional cleaning at the beginning of tenancy or anytime during this tenancy, nor had they requested payment for the cleaning before they submitted this claim.

The parties to these proceedings agreed that the glass shower door had been broken during this tenancy, between September 20, 2019, to September 25, 2019.

The Tenant testified when they went to open the door to the shower on September 20, 2019, that the door fell out of the track and broke, and that due to the broken glass sitting in the shower, they were unable to use the shower between September 20, 2019, to September 25, 2019. The Tenant is claiming for $240.0 in compensation due to the loss of the use of the shower in the rental unit for this period.

The Landlord testified that they received notification from the Tenant that the glass shower door had broken on September 20, 2019, and that they took immediate steps to have the door replaced. The Landlord testified that they personally replaced the shower door on September 25, 2019. The Landlord testified that the Tenant could have used the shower if they had just cleaned up the broken glass and that the absence of the door did not make the shower unusable.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

> ***Return of security deposit and pet damage deposit***
>
> ***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,*
>
> *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.*

I accept the agreed-upon testimony of these parties, and find that this tenancy ended on October 31, 2019, the date the Tenant moved out of the rental unit and that the Tenant provided their forward address to the Landlord by registered mail sent on November 12, 2019. Pursuant to section 90 of the Act, I find that the Landlord was deemed to have received the Tenant's forwarding address on November 17, 2019, five days after it was mailed. Accordingly, the Landlord had until December 2, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep any portion of the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act,* by not returning the Tenant's full security deposit or filing a claim against the deposit, for the portion they wished to keep within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

> ***Return of security deposit and pet damage deposit***
> ***38*** *(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.*

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that they are entitled to the return of double their deposits. I find for the Tenant, in the amount of $750.00, consisting of $1,200.00 for the return of double the security deposit less the $450.00 that had already been returned to them.

The Tenant has claimed for $130.20 in the recovery of their cost to have the rental unit cleaned at the beginning of this tenancy. I accept the testimony of the Landlord that they did not know that the Tenant was displeased with the state of the rental unit at the beginning of this tenancy. I find that at no point during this tenancy, of 153 days, or for 33 days after the tenancy had ended, had the tenant taken action to advise the Landlord that there was a problem in which they would be seeking compensation.

I find that the legal principle of estoppel applies to this part of the Tenant's claim. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly.

In this case, I find that the Tenant established a pattern by not reporting a problem with the initial cleanliness of the rental unit at the beginning of the tenancy, and for a subsequent 186 days. Additionally, I find that the Landlord had relied on this pattern for the duration of this tenancy. As this tenancy has already ended, I find that it is too late for the Tenant to give notice to the Landlord that they are changing their conduct and are now going to strictly enforce their right on this matter.

Consequently, I find that the Tenant is not entitled to their claim for $130.20 in the recovery of cleaning costs form June 9, 2019, and I dismiss this portion of the Tenant's claim in its entirety.

As for the Tenant's claim for $240.00 in compensation for the loss of the use of the shower in the rental unit, between September 20, 2019, to September 25, 2019. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss."

I have reviewed the testimony provided during these proceedings, and on a balance of probabilities, I find that the Tenant ought to have been able to use the shower without a door, and I agree with the Landlord that all the Tenant need to do was to clean up the glass in order to make use of the shower. I find it unreasonable of the Tenant to leave the glass from the broken door where it fell and claim that they could not use the shower do to the presence of broken glass, especially since they were the ones who broke the glass door.

I find that the Tenant did not mitigate their losses when they neglected to clean up the broken glass. Consequently, I find that the Tenant is not entitled to compensation for the loss of the use of the shower, and I dismiss their claim for compensation due on this point in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has have been successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when he failed to repay the full or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **$850.00**. 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: May 6, 2020

Residential Tenancy Branch