Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
MNRL-S, MNDL, FFL

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenants' application for Dispute Resolution was made on December 11, 2019. The Tenants applied for a monetary order for the return of their security deposit and to recover their filing fee.

The Landlord's Application for Dispute Resolution was made on February 5, 2020. The Landlord applied for a monetary order for compensation for damage caused by the Tenant, a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee.

Both Landlords and both Tenants, as well as the Tenants Attorney, attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Matter - *Res Judicata*

At the outset of this hearing, it was brought to this Arbitrator's attention that these parties have had a previous Dispute Resolution hearing with the Residential Tenancy Branch. The Tenants provided evidence that during that hearing a decision been rendered regarding the Landlords' claims for a monetary order for compensation for

damage caused by the Tenants, and for permission to retain the security deposit. The Tenants provided the previous file number and a copy of the written decision from the hearing to this Arbitrator; the file number for the previous decision is recorded on the style of cause page of this Decision.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have reviewed the Landlords' previous application and the decision issued form that proceeding and I find that a previous arbitrator had already made a determination dismissing without leave to reapply the Landlords' claim for permission to retain the security deposit for this tenancy and for a monetary order for compensation for damage caused by the Tenants. I find that the principle of *res judicata* bars me from considering the Landlords' request, in this application, for permission to retain the security deposit and for compensation for damage caused by the Tenants.

I will proceed in this hearing on the Tenants' claim for the recovery of double their security deposit and to recover their filing fee, as well as the Landlords' claim for unpaid rent and to recover their filing fee.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlords?
- Are the Tenants entitled to the return of double their security deposit?
- Are the Tenants entitled to recover the filing fee paid for this application?
- Are the Landlords entitled to monetary compensation for unpaid rent?
- Are the Landlords entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.
The parties agreed that the tenancy began on July 1, 2018, as a six-month fix-term tenancy, that rolled into a month-to-month at the end of the initial fix-term. The parties agreed that the Tenants paid the Landlords a monthly rent of $2,850.00, due on the first day of each month and that the Tenants paid the Landlords a security deposit of $1,425.00 and a pet damage deposit of $1,425.00 (the "deposits"). The parties agreed that the Tenants moved out of the rental unit as of July 3, 2019.

Both the Landlords and the Tenants provided evidence that the Tenants provided their forwarding addresses to the Landlord by text messages on July 10, 2019. The Tenants also testified that they provided their forwarding address to the Landlords, a second time, by registered mail, sent September 12, 2019. The Tenants and the Landlord submitted a copy of their text message history into documentary evidence.

The Tenants testified that there had been a previous hearing, regarding the deposits for this tenancy, in which the Landlords claim to retain the deposits had been dismissed without leave to reapply. The Tenants testified that as of the date of this hearing, the Landlord had still not returned their deposits to them, even though they have their forwarding address and had lost their claim to retain the deposits. The Tenants submitted a copy of the written decision from the previous hearing into documentary evidence.

The Landlord testified that they had a text message from the Tenants, giving them permission to keep deposits to cover the July 2019 rent. The Landlords submitted a copy of this text message into documentary evidence. When asked, the Landlord testified that they did not include a request for the July 2019 rent in their initial claim against the deposits as they believed they had permission to keep the deposits. The Landlords testified that they are now claiming to retain the security deposit to cover the July 2019, rent as the Tenants have claimed to get the deposits back.

The Tenants testified that they had a text message agreement with the Landlords, that the tenancy would end as of July 3, 2019, and that they would only have to pay the rent for the first three days of July 2019, in the amount of $275.00. The Tenants testified that that paid the Landlord the agreed upon amount of $275.00 by e-transfer and moved out in accordance with that agreement. The Tenants submitted a copy of the text message agreement and e-transfer payment into documentary evidence.

The Landlord testified that only one of them had agreed to end the tenancy as of July 3, 2019, for $275.00 in rent and that because they were both not part of the negotiations, the agreement was not legally binding. The Landlords also argued that the agreement to end tenancy as of July 3, 2019, for $275.00 had just been in text message and was therefore not a legally binding agreement because the agreement had not been formalized in writing. When asked, the Landlords confirmed that they accepted the $275.00 rent payment, negotiated for July 1-3, 2019, and are still holding those funds as of the date of this hearing.

The Landlords were also asked to explain why the felt intitled to retain the deposits for this tenancy to cover the July 2019 rent, and to keep the $275.00 they negotiated in rent for part of the same period, July 1-3, 2019. The Landlords testified that they used the $275.00 to set off other expenses they had as a result of this tenancy.

The Tenants are requesting the recovery of double their deposits for this tenancy as the Landlords' failed to return their deposits after they lost their claim.

The Landlords are requesting the recovery of the unpaid rent for July 2019.

Analysis

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

First, I will address the Landlords' claim for unpaid rent for July 2019, in the amount of $2,850.00. I accept the agreed upon testimony of these parties that one of the Landlords and one of the Tenants, negotiated an end of tenancy date and a reduced rent amount for July 2019 via text message, and that this text message negotiation had never been formally written. I also accept that the Landlords did accept the payment of the negotiated reduced rent amount of $275.00 and that as of the date of this hearing, they have retained possession of those funds as well as the deposits for this tenancy.

I acknowledge the Landlords' two arguments; first, that since only one of the Landlords was party to the negotiations, the negotiations could not be binding on both Landlords and second, that the parties to this negotiation did not put in writing their agreement and that it is therefore not a legally binding agreement.

I will address both arguments individually. First, I find the argument that with only one of the Landlords present for the negotiation, the subsequent offer was not valid to be legally flawed. A Landlord can be a person, a business or a corporation who has entered a tenancy agreement to rent a rental unit. There may be more than one landlord; co-landlords are two or more landlords who rent the same rental unit or site under the same tenancy agreement. Generally, co-landlords have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-landlords are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement. After reviewing the tenancy agreement, I find that

these Landlords are co-landlords for this tenancy and that as co-landlords, the actions of any one of them was legally binding on the other.

As for the Landlords' second argument that because the agreement was not a formal, written agreement, it was not a legally binding agreement. On the face of it, this argument is sound, and I agree that normally where there is no written agreement, there would be nothing to bind the parties; however, when there is an action by one side of an agreement, that causes another party to act in response, the actions taken by both parties to this agreement creates a legally binding agreement. The classic example of this being the payment of rent despite there not being a written tenancy agreement; i.e. when a tenant pays rent and the Landlord accepts the payment of rent then allows the tenant to move into the rental unit, a tenancy is created even when there is no signed tenancy agreement between these parties.

This argument holds true in this case; I find that the action of the Tenants of sending the agreed upon rent payment of $275.00, the action of the Landlords of accepting the payment and the resulting action of the Tenants of moving out in accordance with that agreement to have created a legally binding agreement between these parties to end this tenancy as of July 3, 2019, with the accompanying $275.00 rent payment.

In this case, the Landlords willing entered into an agreement with the Tenants, accepted full payment based on the terms of that agreement and then, 218 days later, filed a claim stating that the agreement never existed because it had not been written down. Yet, these same Landlords still retain the full payment for the agreement that they now claim did not exist. Specific to this action, I find the dealings of the Landlords to be unreasonable and duplicitous.

From the testimony, I have heard and the evidence before me, I find that the Tenants entered into negotiations with the Landlords to end the tenancy early, then acted on that good faith agreement, paid the negotiated amount and moved out of the rental unit on the agreed upon date.

Consequently, I find that the text message offer of paying for three days of rent for July 2019, in the amount of $275.00, became a legally binding agreement between these parties when the Landlords accepted and retained that negotiated payment for this agreement.

Therefore, I find that the Landlords have been paid the rent in full for July 2019, and I dismiss their claim for unpaid rent for July 2019, without leave to reapply.

Throughout these proceedings, I found the Landlords to be wanting in their understanding of the *Act* and their responsibilities, obligation and rights as Landlords operating in the province of British Columbia. The Landlords were encouraged during these proceedings to seek legal advice and assistance regarding the *Act* and legal matters in general; they were also referred to the Residential Tenancy Branch's website and information line for guidance.

As for the Tenants' claim, 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 deposit or repay the security 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 find that this tenancy ended on July 3, 2019, the date the Tenants moved out of the rental unit and accept the agreed upon testimony and the documentary evidence before me that the Landlords received the Tenants' forwarding address on July 10, 2019. Accordingly, the Landlords had until July 25, 2019, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute Resolution to claim against the deposit. The Landlords, in this case, filed their claim to retain the deposits on July 17, 2019, as required by the *Act*. However, the Landlords' claim to retain the deposits was dismissed without leave to reapply in the written decision dated January 7, 2020. As the Landlords lost their claim to retain the deposits, they should have returned the deposits for this tenancy in full within 15 days of the date of the decision from those proceedings.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled or justified to keep it. If the landlord and the tenant are unable to agree on the repayment of the security deposit or to agree on deductions to be made to the security deposit, the Landlord must file an Application for Dispute Resolution. If that application is later lost, the Landlords must return the deposit, in full, within 15 days or whichever date is later.

I acknowledged the Landlords' argument that they had a text message from the Tenants giving them permission to keep the deposits for this tenancy. However, given the Landlords' previous argument, made in their claim, for this proceeding, I find it completely unreasonable for them to argue that a text message creates a legally binding agreement for the deposits to their benefit but that a text message from the Tenants does not create a legally binding agreement for the July rent to the Tenants' benefit. As there is no evidence before me of an action on either side that would show that this text message agreement had been actioned, in any way or by either side, I find that the text message agreement to keep the deposits was never formalized and is therefore of no legally binding value.

In this case, I find that the Landlords were to have returned the deposits for this tenancy, to the Tenants, within 15 days of the date of the written decision, dated January 7, 2020, from the Landlords' dismissed claim. Accordingly, I find that the Landlords had until January 22, 2020, to return the full security and pet damaged deposits to the Tenants. However, the Landlords did not do return the deposits as required. Instead, they chose to continue to retain the deposits for this tenancy and filed another claim against the deposits in breach of the *Act*.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return 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 Tenants have successfully proven they are entitled to the return of double the security deposit and pet damage

deposit for this tenancy. I award the Tenants a monetary order in the amount of $5,700.00, granting the return of double the security and pet damage deposits.

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

Conclusion

I dismiss the Landlords' claim for unpaid rent for July 2019 without leave to reapply.

I find that the Landlords breached section 38 of the *Act*, when they failed to repay the security deposit and pet damage deposit for this tenancy, to the Tenants, as required, after they lost their claim on January 7, 2020.

I find for the Tenants pursuant to sections 38 and 72 of the Act. I grant the Tenants a Monetary Order in the amount of $5,800.00 for the return of double the security and pet damage deposits, and for the recovery of the filing fee for their application. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 14, 2020

Residential Tenancy Branch