Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 4, 2020 and amended on February 6, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail. The Landlord acknowledged receipt. Further, the Tenant testified that he served an amendment which (updated the Tenant's address for service) on the Landlord by email. The Landlord denied receipt and the Tenant did not refer me to any documentary evidence in support of service by email. As a result, I find there is insufficient evidence before me to conclude the Landlord was served with the amendment in accordance with the *Act*.

The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail. The documentary evidence consisted of brief submissions. The Tenant stated he did not receive the Landlord's documents because his address for service had changed in accordance with the amendment.

The issues relating to service were discussed with the parties. They parties acknowledged that the amendment merely updated the Tenant's address for service and the Landlord stated he was prepared to provide oral testimony rather than rely on his written submissions. The Landlord also confirmed he was aware the amount being claimed by the Tenant as indicated on a Monetary Order Worksheet dated January 22, 2019. No further issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed.

The parties were given a full 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 relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the security deposit and/or pet damage deposit?

Background and Evidence

The parties did not submit a written tenancy agreement into evidence. However, the Tenant testified the tenancy began on or about February 2, 2015. Although the parties disagreed about when the tenancy ended, the Tenant testified that when he was released from a custodial sentence on or about July 19, 2019, his belonging had been removed and the rental unit has been re-rented to a new tenant. The parties agreed that rent was due in the amount $855.00 per month. The parties also agreed the Tenant paid a security deposit in the amount of $412.50 and a pet damage deposit of $100.00, which the Landlord holds.

As noted above, the Tenant's claim was set out in a Monetary Order Worksheet dated January 22, 2019. First, the Tenant claimed $5,500.00 for a 2004 Nissan Pathfinder. The Tenant testified that he does not know what happened to the vehicle during his period of incarceration. He testified that it has been reported stolen. The Tenant testified that the amount claimed was based on an estimated value for the vehicle provided by ICBC to the Tenant. No receipts, photographs, or other documentary evidence was submitted in support of this aspect of the Tenant's claim.

In reply, the Landlord testified that a woman named T.T., whom he understood to be the Tenant's roommate, removed the vehicle from the rental property and took it to her father's house. The Landlord testified he has no further knowledge relating to the vehicle. In response, the Tenant denied T.T. was his roommate.

Second, the Tenant claims $1,100.00 for an LG 55" LCD television. The Tenant testified he does not know what happened to the television during his period of incarceration. The Tenant testified he does not have a receipt but that the retail price of the recently purchased television was roughly $1,100.00. No receipts, photographs, or other documentary evidence was submitted in support of this aspect of the Tenant's claim.

Third, the Tenant claims $2,200.00 for a queen-sized Posturepedic bed. The Tenant testified the bed was approximately one year old. The Tenant testified he does not know what happened to the bed during his period of incarceration. He testified that the amount of the claim was based on a price of $1,999.00 plus tax, which he testified he paid. No receipts, photographs, or other documentary evidence was submitted in support of this aspect of the Tenant's claim.

Fourth, the Tenant claims $6,700.00 for furniture and property. The Tenant testified that various items in the rental unit were removed during his period of incarceration. The Tenant specifically referenced furniture, weightlifting equipment, tools, and cutlery. He testified that the amount claimed was based on what he considered "reasonable" and "realistic and fair". No receipts, photographs, or other documentary evidence was submitted in support of this aspect of the Tenant's claim.

In reply to the second, third, and fourth items above, the Landlord testified he obtained a writ of possession and that a bailiff attended the rental property on February 21, 2019 to remove the tenant's belongings from the rental unit and place them in storage. The Landlord testified that on March 19, 2019 the storage locker was given to the Tenant's father. In response to the Landlord's allegation that the storage locker was given to the Tenant's father, the Tenant testified that it was "news to me".

Fifth, the Tenant claims $512.50 for the return of the security and pet damage deposits. The Tenant testified that he provided the Landlord with a forwarding address in the Application and subsequently in the amendment.

In reply, the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding package. As noted above, the Landlord denied receipt of the amendment package. However, the Landlord acknowledged that he holds the security and pet damage deposits.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claims for $5,500.00 for a 2004 Nissan Pathfinder, $1,100.00 for an LG 55" LCD television, $2,200.00 for a queen-sized Posturepedic bed, and $6,700.00 for furniture and property, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence before me to establish that the Tenant's alleged loss arose due a violation of the *Act*, regulation, of the tenancy agreement by the Landlord. Indeed, the Landlord testified, and I accept,

that he was granted a writ of possession and subsequently retained a bailiff to remove the Tenant's belongings and place them into storage.

In addition, I find there is insufficient evidence of the value of any loss. As noted above, I was not referred to any receipts, photographs, or other documentary evidence in support of the value of the Tenant's alleged losses.

With respect to the Tenant's claim for $512.50 for the return of the security and pet damage deposits, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving 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 amount of the deposits. The language in the *Act* is mandatory.

In this case, I find there is insufficient evidence before me to confirm the Tenant is entitled to recover the deposits held. The Tenant testified that he provided the Landlord with his forwarding address in the Notice of Dispute Resolution Proceeding package and a different address in the subsequent amendment. I find that the intention of section 38(1) of the *Act* is for a tenant is to give a forwarding address to a landlord before making an application for dispute resolution. Otherwise, having received an application for dispute resolution, a landlord may conclude that the amount claimed is in dispute and is not required to return it to the tenant pending the outcome of the hearing. Unfortunately, as noted above, I find there is insufficient evidence before me to conclude that the Tenant's forwarding address in writing as indicated in the amendment was received by the Landlord. Therefore, I find it appropriate to order that the Tenant provide the Landlord with a forwarding address in writing. The Landlord will have 15 days after receipt of the Tenant's forwarding address to deal with the security deposit and pet damage deposit in accordance with section 38 of the *Act*. Failure to do so may result in the Tenant making a further application for the return of double the amount of the security deposit and pet damage deposit. This order is not an extension of any limitation period under the *Act*. The Tenant's Application is otherwise dismissed without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: June 25, 2020

Residential Tenancy Branch