Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 51 minutes. The two landlords, male landlord ("landlord") and "female landlord," the female tenant ("tenant"), and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that her lawyer had permission to speak on behalf of the tenants.

The hearing began at 1:30 p.m. with all parties present. The landlords left the hearing at 1:42 p.m. and called back in immediately, since they were having difficulty hearing with their phone. While the landlords were not present, I did not discuss any evidence with the tenants, I only confirmed their email address to send them this decision and the rental unit address for this decision. I informed the landlords about what occurred in their absence when they called back in. The hearing ended at 2:21 p.m.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

Preliminary Issue – Dismissal of Landlords' Application

The landlord stated that both tenants were each served separately with the landlords' application for dispute resolution, notice of hearing and first evidence package on March 27, 2020, by way of registered mail to the tenants' lawyer's office. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing.

The tenants' lawyer claimed that neither he, nor his office, received the landlords' application, notice of hearing or first evidence package. He claimed that when looking up the Canada Post tracking number on the website, no signature option was requested by the landlords. The Canada Post website indicates that the package was delivered but not signed by any named person.

The tenants' lawyer confirmed receipt of the landlords' second evidence package, including some photographs, which the female landlord said was dropped off in person to the tenants' lawyer's office.

The tenants' lawyer confirmed that the tenants did not want to proceed with the landlords' application at this hearing, since the tenants were not served with all of the landlords' documents, including the application for dispute resolution. He claimed that the tenants did not have notice of the landlords' claims to be met and there was an issue of procedural fairness. He said that the tenants did not receive a monetary order worksheet and they did not know what was being claimed by the landlords.

The landlords indicated that they wanted to proceed with their application. They claimed that they are permitted to serve by registered mail. They stated that the mail was served during the covid-19 pandemic.

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

> *Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

> *Proof of service by Registered Mail should include the original Canada Post Registered Mail* ***receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,*** *or the landlord's place of conducting business as a landlord at the time of service as well as a* ***copy of the printed tracking report****.*

The landlords did not provide a copy of the printed tracking report or proof that delivery to a named person was made. I find that the tenants did not receive the landlords' application for dispute resolution, monetary order worksheet or first evidence package by registered mail. I find that the tenants' receipt of the landlords' second evidence package does not provide proper notice of the landlords' full claim. Although Canada Post may not require signatures during the covid-19 pandemic, I find that there is no other confirmation that the tenants properly received the landlords' application. I find that the tenants did not have notice of the landlords' claims to be met, in order to respond at this hearing.

During the hearing, I notified both parties that the landlords' application for damage to the rental unit was dismissed with leave to reapply. I informed them that the landlords' application for the $100.00 filing fee was dismissed without leave to reapply. I notified them that for the above reasons, I could not proceed with hearing their claim. I informed them that I would proceed with hearing the tenants' application, as it was filed on March 24, 2020, and I find that the landlords received their application and had proper notice of it, in order to respond.

Preliminary Issue – Inappropriate Behaviour by the Landlords during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
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> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the female landlord interrupted, spoke at the same time, and argued with me and the tenants' lawyer. I asked her to allow me to speak so I could answer her questions. The female landlord was upset with my decision to dismiss the landlords' application and kept repeating the same questions, asking me why their application was being dismissed. After I repeatedly informed the female landlord that my decision was final and repeatedly explained the above reasons for making my decision, she continued to get upset and to repeat the same questions. The landlord was also upset, interrupted me and argued with me about my decision to dismiss the landlords' application.

The hearing took longer at 51 minutes because of the repeated interruptions and disruptive behaviour by the landlords. I caution the landlords to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and they may be excluded from future hearings. In that event, a decision will be made in the absence of the landlords.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee paid for their application from the landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy ended on February 29, 2020. Monthly rent in the amount of $3,965.00 was payable on the first day of each month. A security deposit of $1,982.50 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The landlords received a written forwarding address from the tenants, by way of a letter, dated February 19, 2020. The landlords filed their application for dispute resolution to

retain the tenants' security deposit on March 15, 2020. The landlords did not have written permission to keep any amount from the tenants' security deposit.

The tenant claimed that this tenancy began around October 4 or 5, 2018, while the landlord was unsure of the date in October 2018. The landlord claimed that photographs regarding the condition of the rental unit were exchanged between the parties at the beginning and end of the tenancy. The landlord confirmed that no condition inspection reports were filled out or signed by the parties; the tenants' lawyer agreed. The tenants' lawyer stated that the tenants' forwarding address letter was sent to the landlords by registered mail on February 24, 2020. A copy of the letter and the Canada Post receipt was provided by the tenants and the Canada Post tracking number was verbally confirmed by the tenants' lawyer during the hearing.

The tenants seek a return of double the amount of their security deposit of $1,982.50, totalling $3.965.00. The landlords dispute the tenants' application, claiming that the tenants caused a lot of damages to the rental unit.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. The tenancy ended on February 29, 2020. The tenants provided a written forwarding address by way of a letter, which was received by the landlords. I find that the landlords were deemed to have received the tenants' forwarding address on February 29, 2020, five days after its registered mailing on February 24, 2020. The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the deposit to the tenants.

The landlords made an application for dispute resolution to claim against the deposit for damages on March 15, 2020, which is within 15 days of the end of tenancy date and the deemed forwarding address receipt date of February 29, 2020.

However, I find that the landlords extinguished their right to claim against the tenants' security deposit for damages, as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy.

Section 19 of the *Residential Tenancy Regulation* ("*Regulation*") requires that condition inspection reports must be in writing. Section 20 of the *Regulation* requires detailed, specific information to be included in the condition inspection reports.

I find that the photographs that the landlords claimed were part of the condition inspections, do not meet the above requirements in sections 19 and 20 of the *Regulation*. Both parties agreed that no written condition inspection reports were completed for this tenancy and none were provided for this hearing.

Residential Tenancy Policy Guideline 17 states the following, in part:

> *3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*
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> *• if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of $1,982.50, totalling $3,965.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The landlords' application to recover the $100.00 filing fee and to retain the tenants' security deposit is dismissed without leave to reapply.

The landlords' application for a monetary order for damage to the rental unit is dismissed with leave to reapply.

I issue a monetary Order in the tenants' favour in the amount of $4,065.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: July 23, 2020

Residential Tenancy Branch