Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 2:10 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on April 8, 2020 at 2:09 p.m. she served both the landlords with a copy of the Application for Dispute Resolution and Notice of Hearing by way of e-mail. The tenant submitted copies of e-mail correspondence with the landlords demonstrating the e-mail addresses had been routinely used for correspondence about tenancy matters.

At this time, the Residential Tenancy Branch Director's Order dated March 30, 2019 which allowed service by email during the Covid-19 state of emergency was in place.

As per the Director's order, emailed documents will be deemed received as follows:

• If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;

- If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
- If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

Based on the above evidence, I am satisfied that the landlords were served with the tenant's Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to the Director's order. The hearing proceeded in the absence of the landlords.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?
Are the tenants entitled to monetary compensation for loss?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on September 1, 2018 and ended on September 20, 2019. The monthly rent was $1550.00. The tenants paid a security deposit of $775.00 at the start of the tenancy which the landlord continues to hold. The tenant testified that the landlord issued a cheque dated February 12, 2020 in the amount of $775.00; however, the cheque could not be cashed as it was not made out to the correct name. The tenant submits that this cheque was only sent after a previous dispute application filed by the landlord for damages was dismissed.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant testified the forwarding address was provided to the landlord in writing in person on September 20, 2019 during the move-out inspection. The tenant submits the landlord used this address to file his own application against the tenants.

The tenant is also seeking losses in the amount of $420.00 due to a non-functioning stove and the landlord shutting off the gas to the unit. The tenant testified that the first experienced an issue with the stove on July 5, 2019 and the landlord had the stove

repaired the following week. The tenant testified the stove again stopped working on July 24, 2019. The tenant submitted correspondence in support of notifying the landlord. The tenant testified that nothing was done about the stove this second time and the stove remained not functioning until they vacated. The tenant testified this increased their monthly food budget and submitted credit card invoices for the months of July, August and September in support. The tenant testified that she did not file an application requesting an order for the landlord to perform the repairs as she was not aware. The tenant submits her advocate advised her to not file as landlord was already attempting to evict the tenants at the time and they did not want to make matters worse.

The tenant claims that on July 23, 2019, the landlord also threatened to shut the gas to the unit off. The tenant testified that she "turned on the heat just to test if it had in fact been shut off" and discovered that it was shut off. The tenant stated the heat was the only appliance that required gas. The tenant testified that the weather had cooled considerably in September so she required use of the heat. The tenant testified the gas was turned back on September 15, 2019.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants did provide a forwarding address in writing to the landlord. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord did not have written authorization to retain the security deposit. Although the landlord did file an application to claim against the deposit for damages; the landlord's application was dismissed in its entirety without leave to reapply. I note that in the previous decision, the Arbitrator also made a finding that the landlord's right to claim against the deposit had been extinguished. Therefore, I find the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security deposit and award an amount of $1550.00, which is double the original security deposit of $775.00.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the tenant has not substantiated any loss occurred as a result of the landlord shutting off the gas as heat was the only appliance requiring gas to the unit. The tenant's own testimony was that she turned on the heat just to see if it had in fact been turned off. I find the tenant has submitted insufficient evidence that a loss was suffered due to lack of heating in the middle of summer.

I accept the tenant's undisputed testimony and evidence that they were without a functioning stove for the period of July 24, 2019 to September 20, 2019. While I accept the tenant's suffered a loss as a result, I find the tenant has submitted insufficient evidence to support the value of the loss as claimed. The credit card statements for a 3-month period are not sufficient to demonstrate a pattern of increased food related expenses. Further, I find the tenants could have taken reasonable action to mitigate this loss by filing an application requesting an order the landlord perform the repairs or could have had the repairs completed themselves and then sought reimbursement. The tenant's submission that she did not do so at the request of her advocate does not negate the requirement to mitigate losses. Considering the fact that such loss is difficult to quantify and the tenants' failure to mitigate, I award the tenants the nominal amount of $100.00 for loss of use of the stove for the above period.

As the tenants were successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for this application from the landlord for a total monetary award of $1750.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of $1750.00. 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: July 28, 2020

Residential Tenancy Branch