Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Point Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

This hearing dealt with two applications by the tenants pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A return of the deposits for this tenancy pursuant to section 38;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. Agent JK (the "landlord") primarily spoke on behalf of the landlord.

As both parties were present service was confirmed. The parties each testified that they were served by the other. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Adding a Party

Residential Tenancy Rule of Procedure 7.12 provides that in exceptional circumstances a party may make a request to add another party.

At the outset of the hearing the landlord made an application to add two individuals as a party to the proceeding. The landlord testified that at all relevant times they were acting as property managers for the registered owners of the property. Their contract to manage the property ceased with the end of the tenancy and they submit that the property owners should be named as an additional party to the proceedings.

The tenant takes no position on the addition of another party but testified that they are unaware of who is the registered owners of the rental property and have dealt exclusively with the named respondent landlord throughout their tenancy.

While I accept the landlord's submission that they are a property management company retained by the registered owners of the rental property, I find that there is insufficient evidence that the individuals that are now identified by the landlord should be added as party to this proceeding. I find that the oral submission of the landlord to be insufficient to determine that the individuals named are the property owners who ought to be added as a party to the proceeding. The landlord provided no documentary evidence in support of their submission. While I accept the landlord's position that they owe a duty of care to their clients, including one of confidentiality, I find that in the absence of any documentary evidence to support their submission I am not satisfied that the individuals named should be added as a party to the present proceeding.

Issue(s) to be Decided

Are the tenants entitled to a return of the deposits for this tenancy?
Are the tenants entitled to a monetary award as claimed?
Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in 2016 and ended January 31, 2020. The monthly rent was $1,321.00 payable on the first of each month. There was a previous tenancy for which the tenants paid a security deposit of $600.00 and pet damage deposit of $600.00. When the earlier tenancy ended the deposits, less an agreed upon deduction of $139.30 was transferred for the present tenancy. The parties prepared a move-out condition inspection report dated January 31, 2020 and the tenants provided a forwarding address in writing on the report.

There was an earlier hearing under the file number on the first page of this decision. That hearing pertained to the landlord's application filed on February 18, 2020, for a monetary award and authorization to retain the deposits for the tenancy. In their application the landlord wrote, "I want to keep all or part of the pet damage deposit or security deposit".

In the earlier decision dated April 21, 2020, the arbitrator references the security deposit for the tenancy and authorizes the landlord to retain the security deposit in satisfaction

of a monetary award. The arbitrator is silent on the issue of the pet damage deposit for the tenancy.

The parties agree that the landlord returned the full amount of the pet damage deposit of $600.00 by cheque dated April 28, 2020. The tenant now seeks an amount of $600.00, the balance of double the amount of the pet damage deposit pursuant to section 38(6). The tenant submits the landlord's earlier application did not include a claim to retain the pet damage deposit and it was withheld without the landlord filing for authorization pursuant to section 38(1)(d).

The parties agree that this tenancy ended by way of a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated November 12, 2019 (the "4 Month Notice"). The reason provided on the 4 Month Notice for the tenancy to end is that the landlord will demolish the rental unit and they have obtained all permits and approvals required by law to do the work. The landlord testified that they were instructed by the property owners to issue the 4 Month Notice and were provided with a building permit dated November 7, 2019 for the rental property. The landlord submits that their involvement with the rental property concluded with the end of the tenancy and they have no information on the subsequent use or sale of the property.

The tenant submits that since the tenancy ended they have discovered that the rental property was not demolished but was placed on the market for sale and has subsequently been sold to new owners. The tenant testified that as of the date of the hearing the rental property has not been demolished. The tenant seeks a monetary award in the amount of $15,852.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain those deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the withheld deposit.

In the present case the tenancy ended on January 31, 2020 and the tenant provided a forwarding address on the condition inspection report prepared on that date. As such,

the landlord had 15 days from January 31, 2020, until February 15, 2020, to file an application for authorization to retain the security and pet damage deposit.

Residential Tenancy Rules of Procedure provides that :

> If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

As the government offices were not open on February 15, 2020 and the next day that the office was open was February 18, 2020, the landlord had until that day to file an application. The landlord filed their earlier application on that date.

While the other arbitrator does not address the issue of the landlord's application for authorization to retain the pet damage deposit for this tenancy in the earlier decision, it is evident on the face of the application that the landlord's application included seeking authorization to retain the security and pet damage deposit for this tenancy. As such, I find that the landlord filed an application for dispute resolution within the timeline provided under section 38 of the Act. Therefore, I find that there is no basis for an award in the tenants' favour for double the amount of the pet damage deposit and dismiss this portion of the application.

As the tenants were unsuccessful in this portion of their application they are not entitled to recover the filing fee from the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that when a landlord has issued a notice to end tenancy pursuant to section 49 for demolition of a rental unit, a landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if:

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
(b) the rental unit is not used for that stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice,

The parties do not dispute that the 4 Month Notice of November 12, 2019 indicates the reason for the tenancy to end is that the rental unit will be demolished. The parties further agree that as of the date of the hearing the rental unit has not been demolished and has been sold to new owners of the property.

Therefore, in accordance with section 51(2) of the Act, as steps have not been taken to accomplish the purpose identified in the 4 Month Notice, I find that the tenants are entitled to a monetary award in the amount of $15,852.00, 12 times the monthly rent payable under the tenancy agreement.

Section 2 of the *Act* defines a landlord as:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i)permits occupation of the rental unit under a tenancy agreement, or
>
> (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> ...
>
> (d) a former landlord, when the context requires this;

Based on the testimony of the parties I am satisfied that the named respondent was the agent of the property owners who exercised their power to manage the property and perform duties under the Act, tenancy agreement and service agreement. I therefore find that the named respondent is a landlord as defined under the *Act.*

While I accept the evidence of the landlord that their service contract with the property owner expired upon the end of the tenancy and they have no knowledge of the subsequent dispensation of the property, the Act simply provides that where a Notice to End Tenancy for Landlord's Use pursuant to section 49 has been issued and the stated purposes are not accomplished, the tenant may seek compensation from the landlord. As stated above the Act provides that the definition of a landlord includes a former landlord.

I find that the named respondent is a landlord for the purposes of this application and an appropriate party to be named in the tenants' application. While there may be other individuals including the owner of the property during the tenancy who may also be considered a landlord under the Act, it is not necessary for an applicant to seek out, identify and serve each and every individual who may fit the definition of a landlord under the Act. It would be unreasonable to require that a tenant look behind the written tenancy agreement to determine if additional parties ought to be named as respondents.

I note that the landlord may be able to seek indemnification as against the property owners if their contract of property management services apply provides, but such a determination is beyond the scope of this Tribunal.

I find that pursuant to the Act the named respondent landlord is a landlord as defined in the Act and, pursuant to section 51(2) as steps have not been taken to accomplish the purpose set out in the 4 Month Notice, the tenant is entitled to a monetary award of $15,852.00 as against the landlord.

As the tenants were successful in this portion of their application I find they are entitled to recover the $100.00 filing fee for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $15,952.00. 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: September 4, 2020

Residential Tenancy Branch