Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- The return of their security and pet damage deposits; and
- Compensation for monetary loss or other money owed.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. I confirmed that the hearing details shown on the Notice of Hearing were correct and noted that both the Tenant and I were able to attend the hearing on time and ready to proceed using this information. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Landlord by registered mail on July 16, 2020, at the address for service for the Landlord listed on the tenancy agreement and a Two Month Notice previously issued. The Tenant provided me with the registered mail tracking number and a printout of the registered mail tracking information from the Canada Post website showing that it was delivered on July 17, 2020. The Canada Post website also confirms that the registered mail was sent as described above and delivered on July 17, 2020.

As a result of the above, and pursuant to sections 88(c) and 89(1)(c) of the Act, I find that the Landlord was served with the above noted documents, including a copy of the Application and the Notice of Hearing, in accordance with the Act and the Rules of Procedure, by registered mail on July 17, 2020. The hearing therefore proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf in accordance with rule 7.3 of the Rules of Procedure. The Tenant's documentary evidence was also accepted by me for review and consideration as I was satisfied that it was properly served on the Landlord as set out above, well in advance of the hearing and within the timelines set out in the Rules of Procedure.

The Tenant also submitted documentary evidence from Canada Post showing that the Landlord was previously served with registered mail on October 23, 2019. The Tenant stated that this registered mail contained documentary evidence and the Notice of Dispute Resolution Proceeding Package for a previous hearing scheduled for March 16, 2020, including a copy of the previous Application and previous Notice of Hearing. The Tenant stated that although that hearing was meant to deal with these same matters, their Application was dismissed with leave to reapply as the Landlord did not attend the hearing and the Tenant was unable to provide the arbitrator with the registered mail tracking number for the above noted registered mail package during that hearing. The printout from Canada post shows that the registered mail was delivered and signed for by an adult occupant of the property with the same last name as the Landlord on October 23, 2019, and contains a copy of the signature.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Although the Tenant only sought recovery of the $1,700.00 in deposits paid to the Landlord at the start of the tenancy, Residential Tenancy Policy Guideline (the Policy Guideline) #17, section C.3 states that 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 if applicable.

In the Application the Tenant did not state that they are waiving their right to the return of double the deposit amounts, if applicable, and during the hearing the Tenant stated that they are not waiving this right. As a result, I will consider whether the Tenant is entitled to the return of double the amount of their security deposit and pet damage deposit, if applicable, as part of this Application.

Issue(s) to be Decided

Is the Tenant entitled to the return of all, some, none, or double the amount of their security and pet damage deposits?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month to month tenancy commenced on July 1, 2016, that rent in the amount of $1,700.00 is due on the first day of each month, and that a security and pet damage deposit were each to be paid by the Tenant in the amount of $850.00 each.

During the hearing the Tenant stated that these are the correct terms for the tenancy agreement and that the above noted deposits were paid. The Tenant stated that although the Landlord increased the rent to $1,800.00 effective January 1, 2018, a previous arbitrator found on September 16, 2019, that the $100.00 per month rent increase was unlawful as rent was not increased by the Landlord in compliance with the Act, and refunded the Tenant $2,000.00 in overpaid rent for the 20 month period between January 1, 2018 – August 1, 2019. A copy of this decision was submitted for my review and consideration. The arbitrator also found in that decision that the above noted deposits had been paid by the Tenant and were held in trust by the Landlord at that time.

The Tenant stated that as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice), a copy of which was submitted for my review, personally served on them on July 9, 2019, and the above noted decision dated September 16, 2019, the tenancy was ended on September 30, 2019. The Tenant stated that although they moved out on September 30, 2019, in compliance with the Two Month Notice and the above noted decision and corresponding Order of Possession for enforcement of the Two Month Notice, the Landlord failed to pay them one month compensation as required under section 51(1) of the Act and also cashed a

post-dated cheque for September 2019 in the amount of $1,800.00. As a result, the Tenant sought $1,700.00 in compensation under section 51(1) of the Act, which is equal to one months rent, as well as recovery of the unlawful $100.00 rent increase collected by the Landlord in September 2019. In support of this testimony, the Tenant provided a copy of the cashed cheque, which was post-dated for September 1, 2019, in the amount of $1,800.00 and shows that it was cashed on September 3, 2019.

The Tenant stated that no move-in or move-out condition inspections were scheduled or completed with them by the Landlord and that despite their request by text message on September 30, 2019, that the Landlord attend the rental unit to do a condition inspection with them, the Landlord did not attend and instead advised them to leave the keys in the rental unit as they would inspect it later themselves. A copy of this text message conversation was submitted by the Tenant for my review.

The Tenant stated that they provided the Landlord with their forwarding address in writing by text message on October 4, 2019, and that the Landlord responded to this text message which indicates that it was received. A copy of this text message conversation was submitted by the Tenant. The Tenant stated that despite providing their forwarding address and the Landlords promise that the security deposit and pet damage deposit would be returned, neither deposits have been returned to them by the Landlord. The Tenant stated that although the Landlord promised to leave a cheque for the deposits in the rental unit mailbox, no such cheque was left for them.

The Tenant stated that the Landlord had no right under the Act to keep their deposits as there was no agreement for the Landlord to keep any portion of either deposit, no order from the Branch that they be retained by the Landlord, no outstanding Monetary Order at the end of the tenancy and that to their knowledge, the Landlord had never filed an Application with the Branch seeking to retain either deposit. As a result, the Tenant stated that the Landlord was required to return both deposits to them in full, by October 19, 2019. The Tenant therefore sought the return of double their amounts, totalling $3,400.00.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration despite my finding earlier in this decision that the Landlord was served with the documentary evidence before me, a copy of the Application, and the Notice of Hearing, among other things, by registered mail on July 17, 2020, in accordance with the Act and the Rules of Procedure.

Analysis

I am satisfied based on the uncontested documentary evidence and affirmed testimony before me from the Tenant that an $850.00 security deposit and an $850.00 pet damage deposit were paid to the Landlord by the Tenant, which have not yet been returned to the Tenant. I am also satisfied that the Tenancy ended on September 30, 2019, as a result of the Two Month Notice and that the Tenant provided their forwarding address in writing to the Landlord on October 4, 2019, as I consider text messages a form of written communication.

Section 38 (1) of the Act states that except as provided in subsection (3) or (4) (a), of the Act, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As there is no evidence before me that Tenant extinguished their right to the return of their deposits under the Act or that the Landlord had a right under the Act to retain the Tenant's deposits pursuant to section 38(3) or 38(4)(a) of the Act, I therefore find that the Landlord was required to either return these deposits to the Tenant in full, or file an Application with the Branch seeking their retention, by October 19, 2019, 15 days after the date the Tenant provided the Landlord with their forwarding address in writing.

I accept the Tenant's affirmed and uncontested testimony that their deposits have yet to be returned to them and as a result, I find that the Landlord has failed to comply with section 38(1) of the Act. I therefore grant the Tenant $3,400.00 (double the amount of both deposits), pursuant to section 38(6) of the Act. No interest is payable on the deposits.

I have already found above that I am satisfied that the tenancy ended on September 30, 2019, as a result of the Two Month Notice. Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I accept the Tenant's affirmed and uncontested testimony that they were not provided with one month's compensation or one months free rent by the Landlord as required by section 51(1) of the Act and in fact, paid $1,800.00 in rent for September 2019. As a result, I grant the Tenant $1,800.00; $1,700.00 in compensation

pursuant to section 51(1) of the Act, and $100.00 in overpaid rent for September 2019 as a previous arbitrator already found on September 16, 2019, that the Landlord had unlawfully increased the rent from $1,700.00 to $1,800.00. As a result, I find that the Landlord was not allowed to collect $1,800.00 in rent for September 2019.

Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $5,200.00 and order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$5,200.00**. The Tenant is provided with this Order in the above terms and 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. The Landlord is cautioned that costs of such enforcement are recoverable from them by the Tenant.

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: November 3, 2020

Residential Tenancy Branch