Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 14, 2020 (the "Application"). The Landlord applied as follows:

- For compensation for damage caused by the tenants, their pets or guests to the unit or property;
- To keep the security and pet damage deposits; and
- To recover the filing fee.

The Landlord appeared at the hearing. The Tenant appeared at the hearing and appeared for Tenant T.C. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord confirmed at the outset that he was seeking the following amounts:

- $400.00 for cleaning;
- $182.40 for paint supplies;
- $1,050.00 for painting; and
- $87.80 for supplies from Rona.

The Tenant said he was not aware the Landlord was seeking these amounts and never received the Landlord's evidence or receipts.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package. The Tenant testified that the Tenants had not received the Landlord's evidence.

The Landlord testified as follows. He sent the evidence by registered mail with Tracking Number 1. The hearing package and evidence were sent separately. The evidence was sent October 30, 2020. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered November 04, 2020.

The Tenant testified that he had not been at home the past few days and so did not get the package or a notice card.

I asked the Landlord why the evidence was served so late. The Landlord testified as follows. He was quarantined due to the pandemic twice, from September 12 to 26, 2020 and October 14 to 28, 2020. He could not have the work done on the rental unit until September given the pandemic.

I reviewed the receipts in evidence which are from around September.

The Landlord testified that he had not received the Tenants' evidence.

The parties were required to serve their evidence on the other in accordance with the timelines set out in rules 3.14 and 3.15 of the Rules of Procedure (the "Rules"). These rules require the applicant to serve the respondent not less than 14 days before the hearing and the respondent to serve the applicant not less than 7 days before the hearing.

I advised the parties of the possible outcomes of the service issues including a decision about admission or exclusion of the evidence or a decision about adjourning the hearing. I asked for the parties' positions on these possible outcomes.

The Landlord sought an adjournment so the Tenants had time to receive and review the evidence.

The Tenant did not agree to an adjournment. The Tenant pointed out that this matter has been ongoing for five months and took issue with the timeline. The Tenant submitted that he would have to take time off work again, that the issue requiring an adjournment was not his fault and that an adjournment was not fair.

I considered rule 7.9 of the Rules and the criteria for an adjournment. I decided that an adjournment was appropriate. I accepted that the Landlord could not get work done on the rental unit until September given the current pandemic. I also accepted that the Landlord had been quarantined twice since September given the current pandemic. I found the current pandemic to be an exceptional circumstance that requires some flexibility from the parties. I acknowledged that an adjournment would inconvenience the Tenants; however, I was satisfied the inconvenience was on the lower end of the scale of seriousness. Further, I was able to re-schedule the hearing for November 16, 2020, less than two weeks later. When I weighed the reason for the need for an adjournment with the inconvenience and prejudice to the Tenants, I was satisfied an adjournment was appropriate so that both parties could receive and review each others evidence prior to the next hearing. I advised the parties of this decision.

The Landlord had raised the issue of settlement at the outset. I asked the parties if they wished to discuss settlement before adjourning. The Tenant did not wish to and I moved on to dealing with the details of the adjournment.

Prior to ending the hearing, the Landlord asked the Tenant if he would agree to them splitting the deposits “50/50”. The Tenant said he would agree to this. Given this, I explained the settlement option to the parties again pursuant to section 63(1) of the *Residential Tenancy Act* (the “*Act*”) which allows an arbitrator to assist the parties to settle the dispute. I explained that settlement discussions are voluntary and neither party had to discuss or agree to settlement. I explained that if the parties came to an agreement, I would write this in my written decision and it would become a final and legally binding agreement and that neither party could change their mind about it later. I also told the Tenant that Tenant T.C. would be bound by the agreement.

There was no issue that there was a tenancy agreement between the parties in relation to the rental unit.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I confirmed all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Landlord currently holds the $900.00 security deposit and $450.00 pet damage deposit. The Landlord will keep $675.00 of the deposits and return $675.00 of the deposits to the Tenants.

2. The Landlord withdraws the request to recover the filing fee.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Tenants are issued a Monetary Order in the amount of $675.00. If the Landlord does not return $675.00 of the deposits to the Tenants in accordance with the above agreement, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 09, 2020

Residential Tenancy Branch