Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT, MNRT, RPP

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:

- $1,400.00 for the return of double the amount of their security deposit;
- Compensation in the amount of $1,800.00 for monetary loss or other money owed;
- $400.00 for the cost of emergency repairs completed;
- An order for the Landlord to return the Tenant's personal property; and
- Recovery of the $100.00 filing fee.

The hearing was originally convened by telephone conference call on October 9, 2020, at 1:30 P.M. and was attended by the Tenant and both of the Landlords, all of whom provided affirmed testimony. As the Landlords acknowledged receipt of the Notice of Dispute Resolution Proceeding from the Tenant, including a copy of the Application and the Notice of Hearing, and raised no concerns with regards to service or timelines, the hearing therefore proceeded as scheduled. The hearing was subsequently adjourned due to the number and complexity of the matters claimed by the Applicant in the Application, and the time constraints of the hearing. An interim decision was made by me on October 14, 2020, and the reconvened hearing was set for December 21, 2020, at 9:30 A.M. A copy of the interim decision and the Notice of Hearing for the reconvened hearing was sent to each parties by the Residential Tenancy Branch (the Branch) on October 14, 2020, in the manner requested by them at the hearing. For the sake of brevity, I will not repeat here all of the matters covered by the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on December 21, 2020, at

9:30 AM and was attended by the Tenant and the Landlords, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. As the Tenant's claim for the return of personal property was dismissed by me for lack of jurisdiction at the first hearing, the hearing therefore proceeded based on the remaining claims of the Tenant.

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

At the request of the Landlord J.Y., a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing. At the request of the Landlord L.H. and the Tenant, copies of the decision and any orders issued in their favour will be mailed to them at the mailing addresses provided for each of them in the Application.

Preliminary Matters

Preliminary Matter #1

The Tenant amended their application, reducing the amount of their claim for the recovery of costs associated with the installation of a door from $700.00 to $400.00. As a result, the hearing proceeded on the basis of the lower claim amount.

Preliminary Matter #2

The parties acknowledged receipt of each other's documentary evidence in accordance with the Act and the Rules of Procedure, with the exception of a video from the Tenant, which the Landlords deny receiving. The Tenant stated that it was sent to the Landlords on a CD as part of their evidence package but the Landlords denied receiving a CD and the Tenant did not provide any documentary evidence to corroborate that the CD was contained in either of the registered mail packages sent to the Landlords, such as a witness statement, or photographs or a video recording showing that the CD was included.

Rule 3.5 of the Rules of Procedure states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with all evidence as required by the Act and these Rules of Procedure. As the

Tenant did not provide any documentary evidence to corroborate that the CD was contained in either of the registered mail packages sent to the Landlords and the Landlords denied receipt, I find that the Tenant has failed to satisfy me on a balance of probabilities that the CD containing a video was served on the Landlords. As a result, I have not considered this video in rendering this decision.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to $1,400.00 for the return of double the amount of their security deposit?

Is the Tenant entitled to compensation in the amount of $1,800.00 for monetary loss or other money owed?

Is the Tenant entitled to $400.00 for the cost of emergency repairs completed?

Is the Tenant entitled to recovery of the $100.00 filing fee?

Background and Evidence

Although a great deal of testimony was provided by the parties during both hearings, much of this testimony can be best described as a general history of the tenancy, general complaints about the tenancy by the Tenant, complaints by the parties about one another, or complaints about other occupants of the rental unit by the Tenant. As much of the testimony provided by the parties is not relevant to the matters to be decided or the findings of fact to be made, and for the sake of brevity, only the relevant documentary evidence and testimony has been summarized below.

The parties agreed that the Tenant rented a room in a house shared by other tenants-in-common and that a written tenancy agreement was signed, although only a portion of

this written tenancy agreement was provided for my review. In the portion of the written tenancy agreement provided, it states that the five month fixed term of the tenancy commenced on April 1, 2019, and ended on September 1, 2019. The parties agreed that the tenancy continued month to month thereafter. The tenancy agreement states that rent in the amount of $700.00 was due on the first day of each month and that a security deposit in the amount of $700.00 was to be paid by the Tenant, which the parties agreed during the hearing was paid. The parties agreed that none of the security deposit has been returned to the Tenant and a copy of a previous decision rendered by me on May 6, 2020, in relation to this tenancy, which was submitted for my consideration and which forms part of the Branch records in relation to this tenancy, states that the Landlords were permitted to retain $100.00 from the security deposit for recovery of a $100.00 filing fee.

The parties were in agreement that the tenancy ended on May 9, 2020, as a result of a two day Order of Possession served on the Tenant as a result of the above noted decision rendered by me on May 6, 2020, wherein I ended the tenancy pursuant to section 56 of the Act. The parties were also in agreement that no move-in condition inspection or report were completed at the start of the tenancy and that only a move-out condition inspection but not a move-out condition inspection report were completed at the end of the tenancy. The Tenant stated that they mailed the Landlords their forwarding address in writing on May 19, 2020, and emailed them an additional copy on May 20, 2020. The Tenant provided a photograph of this letter, dated May 19, 2020, in support of this testimony. Although the Landlords could not recall when the forwarding address was received or in what manner, they acknowledged receipt.

Although the Tenant sought $1,400.00 in their Application for the return of double the amount of their $700.00 security deposit pursuant to section 38(6) of the Act, the parties agreed in the hearing that at the end of the tenancy the Landlords were permitted to retain $150.00 from the security deposit by the Tenant, as a result of a prior written agreement between them during the course of the tenancy. Copies of text messages between the Tenant and the Landlords were submitted for my review and consideration wherein the Tenant agreed to the $150.00 deduction from the security deposit. The parties were also in agreement that Landlords have not sought retention of any portion of the Tenant’s security deposit from the Branch, other than retention of $100.00 for recovery of the filing fee associated with the Landlords’ Application for Dispute resolution seeking an early end to the tenancy pursuant to section 56 of the Act.

The Tenant indicated in the Application that they are seeking a total of $2,200.00 in monetary compensation for emergency repairs completed and monetary loss or other

money owed, and during the hearing the Tenant broke this amount down as follows: $400.00 for recovery of some of the costs incurred to install a door in common space of the home in which the Tenant's rented room was located, $1,400.00 for loss of quiet enjoyment, and $400.00 for the return of rent paid for the month of May 2020.

The Tenant stated that the smell of ethnic food being cooked by other occupants of the home in which the Tenant's room was located, who were also tenants of the Landlords, bothered them to such a degree that it impacted their quiet enjoyment of the rental unit. As a result, the Tenant sought permission from the Landlords to install a door, which they repeatedly referred to as the "curry door" throughout the hearings, to reduce the distance to which the cooking smells travelled in the home and therefore the impact of the cooking smells on them. The parties agreed that the Tenant voluntarily installed the door, with the Landlords' permission, at their own cost, and that there was never any agreement on the part of the Landlords to pay for any portion of the door, its installation, or its removal.

The Tenant stated that approximately one month after the door was installed, they were evicted from the rental unit, and although they took the door with them when they left, they stated that they suffered a loss of approximately $400.00 in labour and material costs as the frame for the door put up at their expense was not removed and they got limited value from the significant labour costs incurred by them to install the door and door frame as it was only in place for one month before they were evicted. The Tenant estimated the cost of the door itself to be $100.00 and the cost of other materials, labour and supplies for construction and installation of the door frame to be $700.00.

The Landlords stated that although the Tenant was permitted to purchase and install the door, they were required to do so at their own cost and at their own risk and reiterated that there was never any agreement or obligation on the part of the Landlords to pay for any costs associated with the purchase or installation of the door. Further to this, they stated that the Tenant was lawfully evicted pursuant to section 56 of the Act by way of a decision and Order of Possession from the Branch as the Tenant significantly interfered with or unreasonably disturbed, and seriously jeopardized the health or safety of another occupant of the residential property. As a result of the above, the Landlords argued that they not responsible for any costs associated with the purchase, installation, or removal of the door, regardless of how long the Tenant got use of it at the residential property.

With regards to the Tenant's $1,400.00 claim for loss of quiet enjoyment of the rental unit, the Tenant stated that they had rented the room as their long-term home and that

the Landlords failed to set or enforce appropriate house rules, resulting in significant disturbance and discomfort to them from the behavior of the other occupants of the home, whom the Tenant referred to throughout the hearing as “children” and “pests”. The Tenant spent a significant amount of time during the hearing discussing various interpersonal disputes that they had with one other occupant of the rental unit in particular, whom I will refer to as “K”, such as disputes about partying, the smells of cooking, a general feeling by the Tenant that K lacked respect for them, and allegations that K had stolen their mail.

The Tenant also referred to the rental unit as a “party house” and stated that in addition to the disturbances to them from the other occupants and their guests as a result of partying and a lack of enforcement of house rules on the part of the Landlords, they were also significantly disturbed by the smell of ethnic cooking done by the other occupants. The Tenant stated that they were “bombarded” by the smell of curry when other occupants of the rental unit, K in particular, would cook, and that the smells were so strong that they would wake them up. The Tenant stated that they also vomited as a result of the smell of curry cooking in the house. The Tenant stated that despite their repeated attempts to have the other occupants of the home open the windows when they cooked, the windows were either not opened by them or were not opened long enough to properly dissipate the smell, and that leaving the back door open was not a viable option due to security concerns.

The Tenant stated that as a result of the above, it was not comfortable for them to live in the rental unit, and that they did not feel safe to “deal with these people”, meaning the other occupants of the home, specifically those of another ethnic background than themselves. The Tenant pointed to section 28(b) of the Act, stating that they were entitled to quiet enjoyment of the rental unit, including but not limited to freedom from unreasonable disturbance, which they did not have due to the smell of curry and the behavior of the other occupants of the residential property towards them. When asked how they arrived at the $1,400.00 sought for loss of quit enjoyment, the Tenant stated only that “it was a very small amount in comparison to the inconvenience suffered by them”.

The Landlords denied that the Tenant suffered any loss of quiet enjoyment and stated that in fact, it was the other occupants of the home that were so significantly interfered with and unreasonably disturbed, threatened, and harmed by the Tenant, that the tenancy was ended early by me in the decision dated May 6, 2020, pursuant to section 56 of the Act, without the need for service of a One Month Notice to End Tenancy for Cause on the Tenant. The Landlords stated that the Tenant repeatedly exhibited racist

behaviour towards the other occupants of the home who are of another ethnic background than the Tenant, and that the Tenant has lied and grossly exaggerated and misrepresented the situation.

The Landlords stated that the other occupants of the house all got along well with each other until the Tenant moved in, and that it was the Tenant who was the issue, not the other occupants, which is supported by my previous decision dated May 6, 2020, wherein the Tenant's tenancy was ended pursuant to section 56 of the Act. The Landlords stated that there were four police incidents at the home, all initiated because of the Tenant's behaviour and stated that the Tenant's behaviour got so bad that they and all of the other occupants of the rental unit began documenting and recording all interactions with the Tenant for their own protection. As a result of the above, the Landlords stated that the Tenant should not be entitled to any compensation for loss of quit enjoyment as they were the perpetrator of violent, aggressive, and disruptive behaviour towards the Landlords and other occupants of the residential property, not the victim of it.

The Tenant also sought recovery of $400.00 in rent paid by them to the Landlords for May 2020, the month in which they were evicted. The Tenant did not seek recovery of the remaining $300.00 balance of rent paid by way of subsidy. The Landlords acknowledged receipt of $400.00 in rent for May 2020, for the Tenant and stated that the $300.00 paid by way of subsidy for May 2020, has been returned to the agency of issuance. The Landlords also agreed to return the $400.00 in rent paid by the Tenant for May 2020, less 9 days of rent owed for the days in which the Tenant remained in the rental unit.

Both parties submitted documentary evidence in support of their positions including but not limited to photographs, video and audio recordings, copies of correspondence between themselves, copies of correspondence between the Landlord and other occupants of the residential property, proof or rent and subsidy payments, police file numbers, and written statements.

Analysis

Based on the documentary evidence before me and the testimony of the parties in the hearings, I am satisfied that the terms of the tenancy were as described by the parties at the hearing and as set out in the portions of the written tenancy agreement submitted for my consideration. As a result, I find that rent in the amount of $700.00 was due on the first day of each month, that the tenancy was periodic (month to month) in nature at

the time the tenancy ended on May 9, 2020, and that a security deposit in the amount of $700.00 was paid by the Tenant to the Landlords. I am also satisfied that the Landlords were entitled to retain $150.00 from the security deposit pursuant to section 38(4) of the Act as well as an additional $100.00 for recovery of a previous $100.00 filing fee, as set out in my previous decision dated May 6, 2020, pursuant to section 38(3) of the Act.

The Tenant stated that they sent the Landlord their forwarding address in writing by mail on May 19, 2020, and by email the following day on May 20, 2020, and provided a copy of the letter sent for my review and consideration. Although the Landlords confirmed receipt, they did not know the date or method of receipt and I therefore deem that it was received by them on May 24, 2020, five days after the date that it was mailed to them by the Tenant, pursuant to section 90(a) of the Act.

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 stated above, I am satisfied that the Landlords were entitled to retain $250.00 from the security deposit at the end of the tenancy pursuant to sections 38(3) and 38(4) of the Act. As a result, I find that the Landlord was required pursuant to section 38(1) of the Act to either return the remaining $450.00 balance to the Tenant or file an Application for Dispute Resolution with the Branch seeking retention of it by June 8, 2020, 15 days after the date I deemed the Tenant’s forwarding address received by them writing. As the parties acknowledged during the hearings that the Landlords had neither returned the $450.00 balance of the security deposit to the Tenant, nor filed a claim against it with the Branch, I therefore find that the Tenant is entitled to compensation in the amount of $900.00, double the amount of the $450.00 security deposit improperly retained by the Landlords, pursuant to section 38(6) of the Act.

Further to the above, the Landlords are cautioned that pursuant to section 19(1) of the Act, a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Having made the above noted findings, I will now turn my mind to the matter of rent for May 2020.

Policy Guideline #3 states that a tenant is not liable to pay rent after a tenancy agreement has ended and during the hearing the parties agreed that the tenancy ended on May 9, 2020. Although the Tenant sought recovery of the full amount of rent that they personally paid to the Landlords for May 2020, which was $400.00, I find that the Tenant is not entitled to reimbursement of this full amount as they occupied the rental unit for the first 9 days of May. As a result of the above, as there is no claim before me from the Landlords for recovery of lost rent for the balance of May 2020, and given the Landlords agreement in the hearing that a rent refund is owed to the Tenant, I find that the Tenant therefore only owed the Landlords $22.58 per day in rent ($700.00/31 days) for the first 9 days of May 2020. As a result, I find that the Tenant is only entitled to the recovery of $196.78 in rent paid for May 2020; $400.00 in rent paid, less the $203.22 in rent owed.

I will now turn my mind to the matter of the Tenant's claim for recovery of $400.00 in material and labour costs incurred by them to install a door. During the hearing the Tenant acknowledged that they were permitted to install a door in a common area of the rental unit, at their request and at their own cost, and that there was never any promise on the part of the Landlord to reimburse them for any costs associated with such installation. As such, I find that the Tenant installed the door voluntarily for their own benefit and at their own cost and risk. Although the Tenant sought reimbursement of some of the costs associated with installing the door on the basis that they did not get full use of it prior to being evicted from the rental unit, I note that the tenancy ended as a result of the Landlord's Application to the Branch seeking an early end to the tenancy under section 56 of the Act.

In order to award compensation for a damage or loss suffered by either a tenant or a landlord, section 7 of the Act requires that there be a breach of the Act, regulation or tenancy agreement. As the tenancy was ended lawfully by the Landlord under section 56 of the Act, and the parties both agreed at the hearings that the Tenant was only permitted to install the door at their own cost, I find that no breach of the Act, regulation or tenancy agreement occurred on the part of the Landlords which would give rise to an entitlement on the part of the Tenant to reimbursement of any costs associated with the installation of the door. Further to this, I do not find that the installation of a door for the purpose of dampening the smell of cooking meets any of the criteria for an emergency repair set out under section 33 of the Act, which is the section under which the Tenant has sought relief. As a result, I dismiss the Tenant's claim for reimbursement of any costs associated with the purchase or installation of the door, without leave to reapply.

Finally, I will turn my mind to the Tenant's claim for $1,400.00 in compensation for loss of quiet enjoyment pursuant to section 28(b) of the Act. Although the Tenant stated that they were being unreasonably disturbed and significantly interfered with by the other occupants of the rental unit and that the Landlords had failed to act diligently in protecting their right to quiet enjoyment, I do not agree. First, I find that the majority of the things relied upon by the Tenant at the hearings for their claim for loss of quiet enjoyment are simply routine things associated with communal living and the sharing of space in a rental unit with other persons, such as the smells of other people's cooking, routine interactions, and minor interpersonal conflicts. Second, I am satisfied by the findings made by me in the previous decision dated May 6, 2020, and the overwhelming documentary evidence submitted by the Landlords in the form of photographs, audio records, copies of text messages from the Tenant to the Landlords (many of which I consider to be inappropriate, racist, offensive, and threatening in nature), and copies of email communications to the Landlords from other occupants and former occupants of the rental unit regarding the Tenant's behaviour, that it was the Tenant who was significantly interfering with and unreasonably disturbing the other occupants of the residential property, not the other way around.

Further to the above, even if I had been satisfied that the Tenant's right to quiet enjoyment under section 28(b) had been breached by other occupants of the residential property and that the Landlords had failed to act diligently in addressing this breach, which I am not, I find that the Tenant has also failed to meet the four part test for awarding monetary compensation under the Act set out in Policy Guideline #16, as I find that the Tenant has failed to satisfy me of the value of any loss suffered as they did not provide, either in their written submissions and documentary evidence, or their testimony in the hearings, any basis for the $1,400.00 amount sought by them other than their personal belief that "it was a very small amount in comparison to the inconvenience suffered by them".

Based on the above, I also dismiss the Tenant's claim for $1,400.00 in compensation for loss of quiet enjoyment without leave to reapply.

As the Tenant was partially successful in their Application, I award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore find that the Tenant is entitled to a Monetary Order in the amount of $1,196.78: $900.00 for double the amount of the security deposit improperly retained by the Landlords at the end of the tenancy, $196.78 for the refund of partial May 2020 rent, plus $100.00 for recovery of the filing fee.

Conclusion

The Tenant's claims for $400.00 in costs incurred to install a door, and $1,400.00 in compensation for loss of quiet enjoyment are dismissed without leave to reapply. The Tenants claim for an order for the Landlord to return personal property allegedly in the possession of another occupant of the residential property according to the Tenant, was also dismissed for lack of jurisdiction as set out in the interim decision dated October 14, 2020.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$1,196.78**. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 Landlords are cautioned that costs of such enforcement may be recoverable from them by the Tenant.

Although I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the Act and section 25 of the Interpretation Act, in the event that this is not the case, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: January 20, 2021

Residential Tenancy Branch