Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on August 25, 2020 seeking a monetary order for the return of the security deposit they paid at the start of a past tenancy. Additionally, they applied for monetary compensation for other money owed, and a return of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 26, 2020. The hearing reconvened to grant the tenant more time in presenting their evidence, on January 13, 2021.

In each conference call hearing, I explained the process and offered the parties the opportunity to ask questions. I explained the need to reconvene in a written interim decision dated December 22, 2020.

At the hearing, I provided each party the opportunity to present oral testimony. An agent for the landlord (the "landlord") attended the hearings and had the chance to respond and make submissions on the landlord's behalf. Both parties confirmed they received the prepared evidence of the other.

Preliminary Matter

In the initial hearing, the tenant stated they received the landlord's prepared evidence two days prior to that hearing date. In the reconvened hearing on January 13, 2021, the tenant provided specific responses to points in the landlord's initial evidence package. From this, I am satisfied the tenant had the full opportunity to review the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38 of the Act?

Is the tenant entitled to a monetary loss pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and oral submissions before me, however, only the evidence and submissions relevant to the issues and findings in this matter are described in each section below.

The tenant and landlord agreed to the terms of the tenancy agreement. A copy of the agreement in the evidence is dated December 4, 2017. The rent amount, as shown on the tenancy agreement, is $3,637 per month. This is comprised of base rent, hospitality services, and an additional meal package, set out in the Schedule C Summary of Fees. The tenancy agreement shows a start date of December 5, 2017.

a) compensation for monetary loss – rent amounts and legal bill

The tenant provided a summary of one part of their claim on their Application. This concerns the first month after signing the tenancy agreement. They stated:

- they were instructed to pay one full month rent for December 2017, even though the tenancy was set to start on December 5 – an overpayment of $476;
- after this, the landlord withheld the keys from the tenant, then refused by saying “No” to the tenant’s request, via the tenant’s own lawyer;
- the lawyer and tenant then had to visit the landlord in person to acquire the keys – the tenant incurred legal fees in the amount of $604.31 which is part of their claimed amount;
- they were “unable to find someone to do the physical move-in until after the holidays” – this was January 5, 2018;

- during this interim period “the Landlord charged the tenant full rent, parking, food and amenities for this vacant period totaling $3,697.00”.

On page 3 of their completed Application, they listed the following amounts:

1.	overpayment for December 1st – 5th, 2017:	$ 476.00
2.	legal fee to obtain keys:	$ 604.31
3.	full rent for vacant period:	$3,697.00
	TOTAL	$4,777.31

In their December 13th note to the landlord, the tenant referred to the earlier December 4 meeting. This meeting, after they paid the full month’s rent, left them “ready to move in as soon as [they] got keys and a parking stall.” Without keys, they had the impression “[they were] clearly still not considered a tenant.” The tenant in their message described their feeling that the landlord had mistrust toward them by questioning the validity of their cheques. By the tenant’s own account, the landlord’s cheque-clearing process was taking ten days, and this meant by mid-December the tenant was in a hotel.

The tenant provided page 1 of 2 of their own bank record, showing December 1 to December 18. This shows two transactions for December 14, a cheque amount for $3,697.00, and another for $1,743.50. These are, respectively, the December rent amount in full, and the security deposit payment.

On December 14, the landlord responded to the tenant’s December 13th note. A copy of this message appears in the tenant’s evidence. The landlord stated: “I want to respect your request to take your move ‘one step at a time’ and in doing so, if you felt that I neglected to inform you of the next steps or of assistance that we could provide, I truly apologize.” The landlord then proposed a cancellation of the tenancy agreement, and this would involve a “refund of all monies collected”. Further: “Rent fees charged from December 5 – today will be reversed.”

In the reconvened hearing, the tenant described miscellaneous documents they submitted for consideration. They referred to the landlord’s response letter of December 14, stating at that point there was only a partial refund, with the omission of the initial $476 five-day refund. To this, the landlord reiterated the tenant was never charged for these days.

On the next day, December 15, the landlord asked the tenant via email whether they had received that previous email of the day prior. In the tenant’s own account, they stated: “I notice [they] offered to refund the money from December 5th, but not from December 1st when the

rent was paid from." Further: ". . . [I] decided I had better contact an advocate to deal with these people from now on, as I wanted as little to do with them as possible."

In the hearing, the landlord provided that the tenant was never charged for the initial December 1 – 5 period in December 2017 -- the rent started December 5th. The landlord maintained the tenant did not provide a move-in date: "[a move in] some time after December 20 but [the tenant] can't say when". They credited the amount from December 5 – 20th; this was credited for January 1, 2020. The landlord also stated they never refused the keys until they were paying rent, and the tenant was not actually renting the suite from December 5th - 20th.

The landlord stated: "this was just a series of misunderstandings." They also provided that the cheques provided by the tenant did not show the tenant's own name on the face of the cheque, and this required verification.

In a letter dated December 20, 2017 to the tenant, the landlord provided that there was a credit of $1,759.80 for the following month. This is "to confirm the agreed upon delayed move-in discount discussed at our meeting today". This was the discount for December 5-19th. The landlord provided that the effective move-in date was December 5, 2017; however, the tenant "would not commit to a specific move-in date" stating they would prefer "to move in at my own pace after December 20." In the hearing, the landlord submitted "the obvious point is that the tenant accepted occupancy on December 20."

The landlord provided a document titled "Statement of Account" dated January 1, 2018. This shows a transaction on December 20, "Move in Discount Dec 5-19th", appearing as a credited amount of $1,759.80. A letter from the landlord to the tenant of this same date states: "a $1,759.80 credit will be applied to your account . . ."

The transactions for December 5, for a total amount of rent ($3,637 = the combination of hospitality, rent, and the additional resident meals) is reduced from $3,637 total, to $3,167.71. This is a difference of $469.29. On their Application, the tenant listed this as $476.

The credited amount $1,759.80 is subtracted from the *reduced* total of $3,167.71, for the carryover balance for January 1, difference being $1,407.91. The record shows no full rent amount of $3,637 paid by the tenant for January, with the total being this amount of $1,407.91.

The lawyer whom the tenant consulted with at the start of the tenancy wrote to the landlord on February 1, 2018, to recap issues discussed at the meeting of December 20, 2017. They state: "[the landlord] would refund [the tenant] rent from December 1 to December 19, 2017.

This has not yet been done and [the tenant] asks that [they] be paid this refund along with interest in the amount of 4% of the amount refunded."

In the hearing, the tenant also maintained that from December 20, to January 5, they had to pay double the amount of rent. If the account was credited in December 2017, they had never seen any documents from the landlord that show the accounting for that first month. The landlord maintained the tenant was never charged for December 1 – 20. This was credited on the account.

In their comprehensive journal of their entire stay, the tenant closed with an accounting table. This is to show their calculations arriving at the final amount of $5,375.31.

At the end of the second hour of total hearing time, the landlord stated that they provided a comprehensive spreadsheet to the tenant prior to the reconvened hearing. They provided this to the tenant via email on December 30, 2020, after the initial hearing date of November 26, with no response. They described this as a "forensic audit." In the reconvened hearing, I requested the landlord provided a copy of this document by the end of the day. The landlord did so provide this document.

b) security deposit return

A 'Tenancy Deposit Form', provided by the tenant, is dated November 23, 2017 for the lease start date of December 5, 2017. This shows a copy of a cheque in the amount of $1,743.50, dated November 23, 2017. The tenancy agreement contains the clause "the security deposit will be returned to the resident less owner's cost for returning the suite to marketable condition. . ." In a separate letter to the tenant dated April 10, 2019, the landlord provided that the cost of a carpet and drapery cleaning fee is $240.

The tenancy ended with the tenant's submission of a "Notice to Terminate Tenancy Agreement" dated August 31, 2018, for the rental ending date September 30, 2018. At the time, this was accompanied by a letter stating the same from the tenant.

After this, the landlord detailed their efforts at returning the security deposit to the tenant, less $240 for a cleaning amount. There were two attempts to mail cheques, and both cheques were never cashed. The landlord wrote to the supplied email address; however, there was no response. One cheque for the amount of $1,503.50 is dated October 15, 2018; the other is April 11, 2019, sent to another lawyer for the tenant. On September 4, 2020 the landlord stated via email they were prepared to issue another cheque.

In the reconvened hearing on January 13, 2021 the tenant stated they hired their own cleaning service prior to move out. The landlord provided this was new information to them, and the landlord agreed to forego the reduction of $240 and return the full amount of the security deposit to the tenant.

In the hearing the landlord provided they checked the tenant's forwarding address by October 10, 2018. This was the only original address they had on file, from the initial application. The cheque they sent to this address is dated October 15, 2018.

On October 25, 2018, the landlord followed up with the lawyer who visited at the start of the tenancy.

A message directly to the tenant followed on October 26, 2018 from the "VP of Resident Experience" asking for a mailing address. They were in receipt of the tenant's comprehensive document. The very last page of this comprehensive journal document of the tenant bears a postal address, with their request that a cheque not be sent by registered mail.

On November 21, 2018 the landlord emailed to the tenant to clarify and asked for a mailing address.

The tenant provided in the first hearing that they would not accept the April 2019 cheque sent to their lawyer as it was not for the correct amount of the security deposit.

On their Application for this hearing, the listed the claimed amount of $3,487.00. This is double the amount of the $1,743.50 amount. The tenant provided on their Application: "In early October 2018 tenant mailed a forwarding address to the landlord for the return of the security deposit, which was receipted, yet by the end of November, 2018 there had still not been any refund of the security deposit from the landlord."

Analysis

a) compensation for monetary loss – rent amounts and legal bill

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or

loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for monetary loss, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord provided the "forensic audit" document after the conclusion of the second hour of hearing time on January 13, 2021. In fairness to the tenant, I have not considered this piece of evidence in this analysis. I did not afford the tenant time in the hearing to speak to this piece of evidence; therefore, it is omitted entirely from my consideration and no reference is made to it in arriving at my conclusions herein.

I find the landlord did not collect rent from the tenant for the period of December 1st to December 4th, 2017. The evidence for this is the landlord's own document 'Statement of Account' dated January 1, 2018. I find this is comprehensive in its explanation. Three separate entries for December 5, 2017 show the base amounts were reduced. In the margin, a notation says "Dec 5 – 31 pro-rated." I find this represents an initial reduction in rent for early December when the tenant was not occupying the rental unit. With regard to the four points above the tenant here did not establish that a loss exists; therefore, this portion of their claim -- $476 -- is dismissed.

The tenant felt it necessary to retain a lawyer to assist them with obtaining keys for the rental unit. This came to a billed amount of $604.31. I find this simply the result of miscommunication; however, I can not attribute this solely to the landlord. There was communication between the parties on December 13th and 14th, with the landlord trying to ascertain whether the tenant received their response. There is a clear statement of apology, and the landlord offering a cancellation of the tenancy agreement if the tenant was not satisfied. A short time after this, the tenant hired a lawyer; I conclude this was for some measure of surety in their interactions with the landlord.

For this claimed portion, I find the tenant has not provided sufficient evidence to show this need for retaining a lawyer results from the landlord's violation of the *Act*, or the tenancy agreement. I weigh the evidence of the landlord against that of the tenant on this point, and

give more weight to the landlord's evidence showing their communication on December 13 (on which the landlord stated the keys and garage opener were ready) and December 14 (when the landlord apologized and offered to void the tenancy agreement). I find these are genuine offers of assistance made in good faith. Against this, the tenant only provides a record of their speculation that there was mistrust against their proffered cheques. I find the keys were not "withheld until ten days had passed so everyone could feel safe that I was not writing them rubber cheques" as the tenant surmised.

In sum on this portion of the claim, I find this was not a wanton act of the landlord withholding the keys. They communicated to the tenant that keys were ready to go on December 13. Although the tenant is free to hire a lawyer, their reason for doing so does not lead back to any breach by the landlord. Additionally, it is unknown why the tenant did not engage with their own care worker at this point, and instead chose to enlist a lawyer in their interactions with the landlord. I find claiming this entire amount from the landlord is not evidence of steps taken to mitigate their loss here.

For these reasons, the tenant's claim for recompense of their own lawyer's costs is dismissed.

The tenant claimed "full rent for the vacant period" for the amount of $3,697. I refer back to the landlord's 'Statement of Account' dated January 1, 2018. Along with the landlord's explanation in the hearing, I find this piece of evidence shows an amount was credited, and that amount was $1,759.80. I find it clear that this carried over into the following month, offset from the full amount of January rent. By February, the tenant was asking via their lawyer for a refund; I find this was carried out by the landlord in the form of a credit to the tenant account.

By contrast, the tenant's own account summary does not show the following month of January, and only shows their payment out on December 14 at which time their cheque cleared. There is no record of their own to show the following month was *not* a reduced amount – there is no "page 2 of 2" showing account activity for the following month. Similarly, the tenant's own accounting sheet at the end of their comprehensive account is not clearly presented. The imposition of "fees" within is not explained elsewhere in their evidence. In simple terms, the tenant's amounts do not add up, while the landlord has provided ample evidence and explanation to show that a discount did happen and was applied in kind.

For this reason, I am not satisfied that a loss exists; therefore, this portion of the tenant's claim is dismissed. In total, there is no recompense for monetary loss from the landlord to the tenant.

b) security deposit return

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find the landlord made the effort to return the security deposit to the tenant within the requisite time as provided for in the *Act* as set out immediately above. The landlord initially sent the deposit return – less a cleaning fee – on October 15, 2018. After this, the landlord understood the cheque was not cashed, and made attempts to clarify with the tenant.

The tenant did provide a separate address inside their journal-like document, provided to the VP of Resident Experience in Toronto. That VP asked for clarification on a return address. I find the correct tenant address was not provided to the person who needed clarification on that address, and this was the landlord. The evidence shows they asked for clarification three separate times. There is no record, other than the journal document to the VP, that the tenant gave that address to the landlord.

I find the landlord made a reasonable effort to return the security deposit to the tenant. I find they did so in good faith even though it appears there was no discussion of the reduced amount. If the tenant took issue with the reduced deposit amount, there is no record of them directly stating their concern directly to the landlord. In the hearing, the tenant provided that the landlord had their provided backup caregiver's address.

In the reconvened hearing, the landlord agreed to waive the reduced cleaning fee. With my finding that the landlord made the effort to send the tenant's deposit back within the required timeframe, I award this amount as a full return of the deposit only, without doubling the amount. The evidence shows the tenant was not accepting the reduced amount sent; however, there is no record of them making this known to the landlord. I find the landlord has not breached section 38(1); therefore, they shall return only the set amount of the security deposit at $1,743.50.

Because the tenant was partially successful in their total claim, I grant them reimbursement of one-half of the Application filing fee. That is $50.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $1,793.50, for the amount of the security deposit and half of the application filing fee. The portions of the tenant's claim for monetary loss are dismissed, without leave to reapply.

The tenant is provided with this Order in the above terms and they have the responsibility to serve this Order to the landlord – with a correct forwarding address -- the landlord must be served with this Order as soon as possible. The tenant's forwarding mail address appears on the Notice of Dispute Resolution that they provided to the landlord at the outset of this dispute resolution process. I verified that information with the tenant in the hearing on January 13, 2021.

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 *Act*.

Dated: January 15, 2021

Residential Tenancy Branch