Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, RPP, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Act*, and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant to section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- An order for the landlord to return the tenant's personal property pursuant to section 65; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both of the tenants and both of the landlords attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and evidence; the tenant acknowledged service of the landlord's evidence. Neither party stated they had concerns with timely service of documents.

Preliminary Issue
The landlord with the initials MY has different spellings of her given name. She stated she uses both names on legal documents and in personal life. As such, both variations on the landlord MY's first name are used on this decision and I amend the tenant's application to reflect the same in accordance with section 64(3) of the *Act*.

Second, the landlord filed an Application for Dispute Resolution in response to the tenant's Application for Dispute Resolution on January 2, 2020 after receiving the tenant's evidence. The reason she didn't file the application immediately after receiving

the tenant's Notice of Dispute Resolution Proceedings was because the tenant didn't immediately provide evidence to the landlord. The landlord sought to have her Application for Dispute Resolution crossed with the tenant's application being heard today; the tenant was opposed to this request. I determined that the request to cross applications would supress the tenant's ability to provide and exchange evidence to defend the landlord's claim as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure. I also determined the hearing of the tenant's Application for Dispute Resolution would consume the entire one hour allotted to this hearing and that crossing the landlord's application would potentially result in an adjournment of this hearing. As such, I denied the landlord's application to cross the applications and have the landlord's application considered during this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?
Should the tenant's security deposit be returned?
Should the tenant's property be returned?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The rental unit is a residence located above a commercial property which also houses a storage facility. The commercial property has a locking gate.

The fixed one-year tenancy began on August 1, 2019. The rent of $1,400 was at a reduced rate because the tenants were responsible looking after the gate to the commercial property. A security deposit of $1,300.00 was collected by the landlord which the landlord continues to hold.

The tenant acknowledges that she did not provide the landlord with her forwarding address at the end of the tenancy; instead she registered a change of address form with Canada Post to have her mail forwarded to her new residence.

The tenant testified that when their tenancy began, the commercial tenant below them was a restoration company. When that company left, the space was rented to a contracting company. The tenant testified that after the contracting company moved in, their rental unit began to smell of growing marijuana. Traffic and parking also became an issue for the tenants as employees of the various commercial enterprises were coming and going 24 hours a day.

The tenant testified that the tenancy ended when on December 6, 2019 when the landlord stopped allowing them to access the rental unit. The tenants accidently broke the front entrance (glass) door when their doorstop fell down the stairs. The landlord then blocked the entrance to the rental unit with a truck, denying them access.

According to the tenant, she and the co-tenant were kicked out and locked out by the landlord and due to this, they had to rent a hotel room for months. They were not allowed to access the rental unit to retrieve clothing and personal belongings and were required to have all their meals out since they had no kitchen in the hotel room. They tried to retrieve their belongings on multiple occasions however the landlord barricaded the door by parking trucks in front of the broken door and locking the commercial gate.

The tenant testified that the landlord took their possessions and put them in a “C-can”, which I understand to be a shipping container. The tenants submit that they got their possessions in the container back, however due to the manner it was stored, their possessions were damaged. The one month old couches and bed were scratched, cut and ripped. The tenant also testified that their washer and dryer set were crammed into their mini-van by the landlord and/or their agents. The landlord has prevented the tenant from retrieving the van with the washer and dryer in it.

The landlord gave the following testimony. The female tenant texted the landlord on December 6th advising they wanted to move out. On December 7th, the police dropped the female tenant off at the rental property, bloody and bruised. The landlord testified that the male tenant told him that the female co-tenant had trashed the suite. The female tenant was given money by the landlord to leave while the male tenant, the landlord and a witness viewed the suite. The front door, made of glass and metal was smashed and shattered, the tenants’ furniture was destroyed, and the suite was in bad shape. The landlord testified that the male tenant gave the landlord $1,000.00 to help

in fixing the damage to the rental unit and offered his work trailer as collateral to show he was going to repair it. The male tenant acknowledged that the damage to the rental unit was too extensive for them to continue to live in it and that they both agreed that a truck would be placed in front of the smashed door to stop people from entering. On this day, the male tenant advised the landlord that the female tenant has a substance abuse problem and that he is trying to put her into rehab.

The landlord testified that after the tenancy ended, he did all he could to help the tenants move their belongings out. To support his version of the facts, the landlord provided text messages between himself and each of the tenants.
A text from the male tenant dated December 16th states:
Good morning [landlord]. I'll have everything out this week. Just super busy. Two girls are stopping by to clean.
December 18th, the landlord responds:
Hi [tenant] just wondering if you could let me know when everything is out walls are fixed everything is clean so I can show it.
December 31, the tenant texts back:
I'll have everything out by end of Saturday 4th. It's the only time I can get help and breathe. Sorry for the inconvenience. I've been put into a position and am trying to do my best. It's been a difficult month.

Further texts were sent between the male tenant and the landlord between January 11 and January 31st. The texts from the landlord advise that the tenant's belongings are in a C-Can. On January 31st, the tenant asks to come between 6 and 7 p.m. to move his belongings. The landlord responds that the there is no barricade in front of the tenant's door and the lock to the tenant's door was changed. The landlord tells the tenant he can call him and the landlord can meet him to unlock the gate. The landlord agrees to be there at 5:30 to give the tenant access to his belongings. He will leave the door open to the suite, the lock off the C-Can and he would be there to open the gate. The landlord testified that he waited until 6:00 p.m. for the tenant to come and the tenant never did. A "find my friends" screenshot taken at 6:09 p.m. was provided by the landlord to show the tenant was not at the rental unit when he said he would come.

Text messages with the female tenant were also provided as evidence by the landlord. In these texts, the female tenant describes her difficulty in finding trucks, trailers and tow trucks to remove their belongings. The landlord testified that the texts show he did everything he could to assist the tenants in getting their items moved.

The landlord disputes that he prevented the tenants from collecting their van with the washer and dryer inside. The tenants have always been welcome to retrieve the van with the washer and dryer. During the hearing, the parties agreed that the tenant could come retrieve their van with the washer and dryer inside.

Settlement Reached

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. The parties agreed to the following order:

- The parties agree that the tenants will attend at the rental unit with a tow truck to retrieve the minivan with the washer and dryer between 7:00 a.m. and 5:00 p.m. on Monday, January 25, 2020.

This portion of the tenant's claim made under section 65 of the *Act* is settled pursuant to section 63 of the *Act*.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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 parties present opposing versions of the events. The tenants allege that after accidently breaking the glass entrance door, the landlord locked them out of the rental unit, denied them access to it and forced them to live in a hotel. This led to the tenants having their furniture damaged when the landlord destructively stored their furniture in the C-Can.

The landlord's version is that the female tenant did damage to her own furniture on December 6th when she "trashed the suite". This includes the tenant "smashing-in" the glass front entry door which make returning to the rental unit dangerous as the rental unit is located in a semi-industrial location. The landlord argues that the text messages provided as evidence shows he was supportive in allowing the tenants to get their belongings out while still getting the unit ready to re-rent to new tenants.

As stated in Rule 6.6, the onus to prove their case is on the person making the claim. I find that on a balance of probabilities, the tenant has not satisfied me their version of the fact is the more likely to be believed. The landlord has provided verifiable proof that the tenants had intended on moving out based on the female tenant's first text message on December 6th. Next, I find the text messages between the landlord and the male tenant are indicative of this tenant acknowledging he's trying to get his belongings out of the rental unit and the property. In fact, the tone of the male tenant's emails is more apologetic than accusatory. None of the texts appear to suggest the landlord is denying the tenants access to the rental unit. There is no indication from any of the tenants' texts that they felt they were "locked out" of the rental unit or that they felt the landlord was responsible for their predicament. I find the landlord was doing his upmost to accommodate the tenants by putting their goods into a safe and secure storage while the landlord got to work making the rental unit once again rentable.

If the tenants were truly concerned with being "locked out" of the rental unit by their landlord, the tenants had recourse through the Residential Tenancy Branch to seek an order that the landlord provide them with possession of the rental unit. I find the fact that they did not do so to be indicative of their understanding that the landlord was not actually preventing them from accessing it. On the contrary, I find the landlord was safeguarding the tenants' remaining possessions by blocking the broken glass door leading to the rental unit. From the text messages, it is clear to me that the landlord tried to accommodate the tenants in retrieving their possessions. It was the tenants' own busy schedules and inability to find trucks, trailers and tow trucks that delayed their retrieval of possessions.

I find that the tenants have not provided sufficient evidence to satisfy me the landlord has breached the *Act*, regulations or tenancy agreement. As such, I find the landlord is not responsible for any of the damages or compensation sought by the tenants. The tenants' claim for compensation is dismissed without leave to reapply.

The tenants testified that they have not yet provided their forwarding address to the landlords. Section 38 of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the tenants have not yet provided their forwarding address to the landlords, I find the application for a return of the security deposit to be premature. This portion of the tenants' application is dismissed with leave to reapply.

If the tenants provide their forwarding address to the landlords in accordance with the service provisions as set out in section 88 of the Act, the landlord would then be obligated to comply with section 38 of the Act.

Conclusion

The parties agree that the tenants will attend at the rental unit with a tow truck to retrieve the minivan with the washer and dryer between 7:00 a.m. and 5:00 p.m. on Monday, January 25, 2020.

The tenants' application for the landlord to return their security deposit is dismissed with leave to reapply once they provide a forwarding address to the landlord.

The remainder of the tenants' application is dismissed without leave to reapply.

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: January 30, 2021

Residential Tenancy Branch