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 on October 6, 2020 seeking a return of their security deposit, other monetary compensation and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 28, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant stated they delivered notice of this dispute to the landlord. This did not include the single piece of prepared evidence they made in advance of the hearing.

The landlord forwarded their evidence to the tenant on January 18, 2021. They provided images of the mailbox used, and the envelope containing those submissions. The tenant in the hearing confirmed they received this evidence prepared by the landlord.

Issue(s) to be Decided

Is the tenant entitled to an order granting refund of the security deposit pursuant to s. 38 of the *Act*?

Is the tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

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

The terms of the tenancy were not in dispute. The verbal agreement was for the tenant to pay $1,400 when they started the tenancy in October 2016. The tenant initially paid a security deposit of $700. By way of background, the tenant and landlord had a mutual contact, and this is how they established the landlord-tenant relationship. The tenant stated they "did not know a contract was needed".

The tenant moved out at the end of August. They paid no rent for August or September 2021. According to the tenant, the landlord advised via text message that they needed to end the tenancy due to needed renovations to be undertaken. To the tenant, this meant the landlord was giving a two-month notice to end this tenancy. They advised the landlord that the time involved for ending a tenancy for this reason was in actuality four months, instead of two.

The tenant advised the landlord in July via text message that they would be moving. This was after talking with the landlord about the need for renovations in the rental unit. In the hearing the tenant provided their recollection that the landlord mentioned about reasons tied to their mortgage of the property. The tenant summed up the situation with the landlord thus: "So basically it's a two-month notice to end the tenancy, even though it is supposed to be a four-month notice."

After this exchange with the landlord, the tenant had to find another living arrangement, and was able to do so within the two-month period, with a friend helping out. The tenant felt they did not have to formally end the tenancy; however, they know that a four-month ending of tenancy entitles them to one month rent-free.

The tenant stated they provided their forwarding address to the landlord via text message, and then again after moving out on August 31st. They messaged to the landlord that it was time for the landlord to check the place prior to move out; however,

they received no answer. On their own volition, the tenant went to the landlord's own house, and took them to the rental unit for review.

A few days after this end-of-August meeting, the landlord forwarded pictures to the tenant of a couple of leftover items. The tenant made two returns to the rental unit, on September 1st and 2nd, for further clean-up in the rental unit. By September 3rd, the tenant returned to the rental unit to retrieve these items. At this time, they noticed someone was living in the rental unit. They also noticed the landlord was renovating the landlord's own adjacent accommodation, and not the rental unit.

After another period of time – "after 2 weeks, after 3 weeks" – the tenant never heard about the return of the deposit. On September 15th, they delivered a "Notice of tenant's Forwarding Address" (form RTB-47) in a brown envelope in the landlord's own mailbox on September 15. They also sent text messages with their forwarding address to the landlord.

In preparation for the hearing, the landlord prepared a written statement. Their key points are as follows regarding their need for the rental unit:

- they asked the tenant on July 1st, 2020 if they were "willing to end the tenancy within the next month or two, due to immediate renovations to take place in order for the property to be on sale for financial reasons"
- this was a "proposed timeframe", and the tenant was only requested to move if the tenant could find another home within this timeframe
- the tenant "did not accept the verbal or written notice as [they] required a four month notice"
- the landlord thus decided to do renovations at a later date
- the tenant "was allowed to continue living on the property with no end date provided."

The landlord's account provides that "[the tenant] mentioned to the landlord that [they] will be moving out by the end of the month from [their] own willingness because [they] had found a new place." This was on August 1st, for the move out date of August 31, 2020.

The tenant did not pay rent for August and did not provide any written documentation to end the tenancy by July 31st. For this reason, the landlord retained the full $700 damage deposit amount to partially cover the August rent.

In the hearing, the landlord reiterated they did not specify a particular date to the tenant to move out due to renovations. This was a more casual inquiry via text message to the tenant. After they realized it was normally a four-month notice to the tenant in this renovation scenario, they "let it go". They asked the tenant if they could vacate, and if they could not, that was "totally understandable as well".

The landlord replied that what the tenant observed in early September were not new tenants in the unit; rather, this was the landlord's own family in the unit at that time.

In the hearing, in response to this, the tenant confirmed the landlord was not firm about a date and did not issue a formal Notice to End Tenancy document. They accepted they had to make the decision to initiate a new rental unit search and end to the tenancy.

On their Application, the tenant claimed $4,200. The description provided is that the landlord only gave 2 months' notice to end the tenancy. Further: "Landlord reason is for renovations under the tenancy Act is 4 months notice to end tenancy for repair, renovations."

The tenant also claimed a monetary amount for the security deposit, for $1,400. This is with the description that the "landlord never return[ed] [the security deposit] after 14 days."

Analysis

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

From the submissions of both parties, I am satisfied that an agreement was in place between the landlord and tenant for the rental unit. The matters before me concern the end of tenancy.

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 if I determine that the claim is valid.

To be successful in a claim for compensation for damage or 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 tenant here claims for monetary loss or other money owed, in the amount of $4,200. I find the tenant has not established the value of their loss. They have not provided a clear indication of what this number represents. What they are claiming for is not presented.

Any award granted for this claim would be prejudicial to the landlord where there are no particulars of the claim presented to them. This portion of the tenant's claim is not broken down into discrete points; therefore, I am unable to grant monetary compensation where the amount is not presented or rationalized.

Furthermore, I am not satisfied that a loss exists based on the facts regarding the end of tenancy. The tenancy ended on the tenant's own initiative. With no violation of the *Act* or the tenancy agreement such as it existed, there is no award granted.

For these reasons, I dismiss the $4,200 portion of the tenant's claim, without leave to re-apply.

The second part of the tenant's claim concerns the dispensation of the security deposit. The *Act* s. 38(1) states:

1) . . .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. . .any security deposit . . . to the tenant
   d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

6) If a landlord does not comply with subsection (1), the landlord

a) may not make a claim against the security deposit or any pet damage deposit, and
b) must pay the tenant double the amount of the security deposit . . .

Based on the facts presented in this scenario, as well as an assessment of the reliability of each party's evidence, I find the tenant did not provide their forwarding address to the landlord on September 15, 2020. Although they provided a copy of the form used for this purpose (RTB-47), there is no evidence to show they served it in line with any method prescribed by s. 88 of the *Act*.

The form itself on page 2 has two indications crossed off: both served 'in person' and 'in the mail box or mail slot'. This is not a clear indication of which method the tenant utilized for service. Though this detail may have changed upon their visit to the landlord's residence – that is to say, a visit/service 'in person' came to naught with the tenant then using the mail box – it is not clearly indicated on the form that this is the case, nor did the tenant speak to this in the hearing. At the start of the hearing, the landlord stated they did not see this form from the tenant. Additionally, it was disclosed to them for this hearing.

The tenant stated they provided their forwarding address to the landlord via text method. This method of conveying information to the landlord is of questionable efficacy. It is proven that this method led to either party having false assumptions regarding the end of the tenancy. Moreover, the tenant did not provide a copy of these text message into the evidence and did not lend accuracy to this account by stating the dates/times of said text messages.

The *Act* s. 38(1) specifies the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing. I find the tenant utilizing text messages is not "in writing" as the *Act* specifies – as such, it remains unproven if this information was conveyed to the landlord.

The former condition in s. 38(1) – the date of the tenancy ending – is also vague as presented in the facts here. There appears to be no exact date where the tenant handed the keys back to the landlord at the end of August. The legality of the tenant's end-date move-out (i.e., not one full month notice from them) is not the key point here; rather, the tenant was still making visits into the unit into September as they presented in their evidence. Furthermore, they left possession behind and this required the landlord to message to them in order to arrange for retrieval of these items. This is not a clear date to the end of tenancy, as the *Act* requires.

For these reasons, there is no reward for double the amount of the security deposit. There is neither an established end-of-tenancy date, nor is there a clear indication of when the tenant gave their forwarding address to the landlord.

The landlord retained the $700 security deposit as payment toward the August rent that was unpaid by the tenant. They have no legal basis for doing so. For this reason, they must return the full amount of the security deposit to the tenant. In this hearing, I make no consideration of the landlord's monetary loss or other money owed. That is properly the subject of a separate application for dispute resolution by the landlord.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was not successful for the bulk of their claim, I find they are not entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenants the amount of $700. I grant the tenant a monetary order for this amount. This monetary order 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 s. 9.1(1) of the *Act*.

Dated: February 1, 2021

Residential Tenancy Branch