Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for damage caused by the tenant, their pet or their guests,
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

The hearing was originally convened before me by telephone conference call on November 24, 2020, at 1:30 P.M. and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The hearing was subsequently adjourned, and an interim decision was made on November 25, 2020, and the reconvened hearing was set for February 11, 2020, at 11:00 A.M. A copy of the interim decision and the Notice of Hearing was emailed to each party by the Residential Tenancy Branch (the Branch) on November 27, 2020, as per their request, at the email addresses provided by them for this purpose during the hearing. In the interim decision I made numerous findings and orders which, for the sake of brevity, I will not repeat here. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on February 11, 2021, at 9:30 A.M. as scheduled, and was attended by the Tenant and a witness for the Tenant (the Witness), both of whom attended on time and ready to proceed. No one attended on behalf of the Landlord. As stated above, the Branch sent a copy of the interim decision and the Notice of Hearing to the Landlord by email on November 27, 2020, at the email address provided by them at the hearing for this express purpose. As a result, I am satisfied that the Landlord was properly notified by the Branch of the date and time of the reconvened hearing and provided with a copy of the interim decision and

instructions on how to attend the reconvened hearing, well in advance of the hearing date. Further to this, I note that neither the Tenant nor the Witness had difficulty attending the hearing on time using the information contained in the copy of the same Notice of Hearing, which was also emailed to the Tenant by the Branch on November 27, 2020.

Although Branch records indicate that the Landlord emailed the Branch on February 3, 2021, asking for their dispute code (the code used to upload documentary evidence online), as this email was received from a different email address than the one on file, which is also the one they provided to me during the first hearing for the purpose of receiving a copy of the interim decision and the Notice of Hearing, the Branch was unable to confirm the Landlord's identity and therefore unable to provide that information in reply. Instead, the Branch replied to the email advising the Landlord to confirm their identity either by emailing the Branch back from the email address on their file, emailing the Branch back and providing the address, phone number, and email address on file, or calling the Branch confirm details over the phone. The contact number for the Branch (1-800-665-8779) was also provided. Branch records show no further contact from the Landlord in this regard.

In any event, as stated above, I am satisfied that the Landlord was properly notified by the Branch of the date and time of the reconvened hearing and provided with a copy of the interim decision and instructions on how and when to attend the hearing. Further to this, the above noted email received on February 3, 2021, does not indicate that the Landlord failed to receive this email. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant and their Witness attend the hearing on time and ready to proceed and requested that the Landlord's Application be dismissed without leave to reapply when the Landlord failed to attend the reconvened hearing of their own Application, as they stated that it is fraudulent in nature and entirely baseless. As neither the Landlord nor an agent acting on their behalf attended the reconvened hearing for the Landlord's Application, and the Tenant and Witness attended on time and ready to proceed, I therefore dismissed the Landlord's Application, in its entirety, without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

Policy Guideline #17, section C, subsection 1, states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any

deductions permitted under the Act, on a landlord's application to retain all or part of the security deposit, whether or not the tenant has applied for dispute resolution for its return, unless the tenant's right to the return of the deposit has been extinguished under the Act. Further to this, Section C, subsection 3 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the security deposit if doubling of the security deposit is required by the Act.

As the Landlord sought to retain the Tenant's security deposit as part of their Application, and the Tenant stated at the hearing that they do not waive their right to the return of double the amount of their security deposit, I find that I must now assess if the Tenant is entitled to the return of all, some, none, or double the amount of their security deposit, even though the Landlord's Application has been dismissed.

The Tenant and the Witness were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

In my interim decision dated November 25, 2020, I ordered the Tenant to re-serve on the Landlord at the address listed on the cover page for the interim decision, and submit to the Branch, not later than 11:59 P.M. on December 8, 2020, a single package containing all documentary evidence already sent to the Branch by courier on November 17, 2020, and posted to the door of the rental unit on November 15, 2020. I also ordered the Tenant to submit proof of the above to the Branch not less than 7 days before the date of the reconvened hearing.

At the reconvened hearing the Tenant provided affirmed and uncontested testimony that they complied with the above noted order regarding the re-service of their documentary evidence, which they testified was posted to the door of the address noted for the Landlord on the cover page for the interim decision, as required, on December 8, 2020. The Tenant submitted a witnessed and signed proof of service document confirming the same. The Witness also provided affirmed and uncontested testimony at the hearing that they are the person accused by the Landlord at the previous hearing of stealing the original document package from the Landlord's door, and that they did not such thing.

As a result of the above, I am satisfied on a balance of probabilities that both the original package posted to the door of the rental unit on November 15, 2020, and the re-served package, posted on December 8, 2020, to the door of the address given by the Landlord at the original hearing for this purpose, were served on the Landlord in

accordance with the Act, contrary to the testimony provided by the Landlord at the original hearing. I therefore find them deemed served on November 18, 2020, and December 11, 2020, respectively, pursuant to section 90(c) of the Act.

The documentary evidence originally submitted to the Branch for my consideration by the Tenant in accordance with the Act and the Rules of Procedure, but not before me at the time of the hearing due to physical document quarantine practices, is now before me, along with a subsequent copy of the documents re-served by the Tenant on the Landlord as set out above, and I am satisfied that the Tenant complied with all of the orders set out by me in the interim decision with regard to re-service and re-submission of this evidence. I therefore accept the documentary evidence before me from the Tenant for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. Unless otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure.

Issue(s) to be Decided

Is the Tenant entitled to the return of all, some, none, or double the amount of their security deposit?

Background and Evidence

The written tenancy agreement in the documentary evidence before me states that the three month fixed-term tenancy commenced on July 1, 2020, and was set to end on September 30, 2020, after which time it could continue on a month to month basis. The tenancy agreement also states that rent in the amount of $1,800.00 is due on the first day of each month and that a $900.00 security deposit was paid. In the Application the Landlord indicated that the rental unit was a houseboat.

The Tenant did not dispute the above noted terms of the tenancy agreement and confirmed that they rented a houseboat from the Landlord. However, the Tenant and Witness testified that the tenancy ended on August 1, 2020, not September 30, 2020, as set out in the tenancy agreement. The Tenant also agreed that a $900.00 security deposit was paid to the Landlord at the start of the tenancy, and testified that none of it

has been returned to them. The Tenant testified that move in and move out condition inspections and reports were not completed with them by the Landlord as required by the Act and the regulations and that their forwarding address was provided to the Landlord in writing by email on August 1, 2020, and several subsequent times both verbally and in writing in the week thereafter.

The Tenant also testified that there were no agreements in writing, or in any other manner, for the Landlord to keep any portion of their security deposit, and that to their knowledge, there was neither an order from the Branch allowing the Landlord to keep all or any portion of their security deposit nor a Monetary Order against them from the Landlord which, at the end of the tenancy, remained unpaid. As a result, the Tenant sought the return of the full amount of their security deposit, or double its amount, if applicable.

No one appeared at the reconvened hearing of the Landlord's Application on behalf of the Landlord to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that the Landlord was provided with proper notice of this hearing from the Branch by email on November 27, 2020, including instructions on when and how to attend, as well as copy of my interim decision dated November 25, 2020.

Analysis

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.

Sections 23 and 35 of the Act state that the landlord and tenant together must inspect the condition of the rental unit at the start and the end of the tenancy, that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection, and that the landlord must complete and give to the tenant, a condition inspection report in accordance with the regulations. Sections 24 and 36 of the Act state that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with the requirements incumbent upon them under sections 23 and 35 of the Act.

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As there is no evidence before me to the contrary, I accept as fact that the terms of the tenancy agreement are as set out in the written tenancy agreement, and as stated by the Tenant at the hearing. I also accept as fact the Tenant's uncontested and affirmed testimony that:

- they paid the Landlord a $900.00 security deposit:
- none of the security deposit had been returned to them as of the date of the reconvened hearing;
- the tenancy ended on August 1, 2020;
- the Landlord failed to complete move in and move out condition inspections and reports with them at the start and end of the tenancy as required by sections 23 and 35 of the Act and Part 3 of the regulations; and
- that they provided their forwarding address to the Landlord by email, which I find constitutes "in writing", for the purposes of the Act and regulations, on August 1, 2020.

As there is no evidence before me that the Tenant abandoned the rental unit or otherwise extinguished their right to the return of the security deposit or that the Landlord had a right under sections 38(3) or 38(4) of the Act to retain all or a portion of the Tenant's security deposit, I therefore find that they were required to either return the full amount to the Tenant, or file a claim against it, by August 16, 2020, as set out under section 38(1) of the Act. Based on the uncontested testimony of the Tenant, I am also satisfied that the Landlord extinguished their rights to claim against the security deposit for damage to the rental unit, under both section 24 and section 36 of the Act. Based on the above, and pursuant to Policy Guideline #17, I find that the Landlord was therefore required to either return the full amount of the security deposit to the Tenant or file a claim against it with the Branch for something other than damage to the rental unit, by August 16, 2020.

As Branch records show that the Landlord filed their Application with the Branch seeking retention of the Tenant's security deposit for unpaid rent in excess of the security deposit amount, and recovery of the filing fee, in addition to damage to the rental unit, on August 4, 2020, I therefore find that the Landlord complied with section 38(1) of the Act, despite my finding above that they extinguished their rights to claim against the security deposit for damage to the rental unit pursuant to sections 24 and 36 of the Act.

As a result, I find that the Tenant is only entitled to the return of the full amount of the security deposit paid by the Tenant and retained by the Landlord pending the outcome

of this Application, not double that amount, and I therefore order the Landlord to return the full amount of the security deposit, $900.00, to the Tenant.

Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $900.00.

Conclusion

The Landlord's Application is dismissed in its entirety, without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$900.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. 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. The Landlord is cautioned that costs of such enforcement may be recoverable from them by the Tenant.

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: February 12, 2021

Residential Tenancy Branch