Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSDS-DR, FFT

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of a portion of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords, male landlord ("landlord") and "female landlord" (collectively "landlords") and the two tenants, female tenant ("tenant") and "male tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 69 minutes.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' application.

The tenant confirmed that although the tenants received only one copy of the landlords' evidence, instead of two copies, and the evidence was received late from the landlords, the tenants were ready to proceed with the hearing and they did not have any objections to the landlords' evidence.

The tenants' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlords. An "interim decision," dated November 10, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlords with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents from the tenants. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the above required documents.

The landlord confirmed receipt of the tenants' original application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application.

During the hearing, I explained the hearing and settlement process to both parties. Both parties confirmed that they were ready to proceed with the hearing and they did not have any objections.

Preliminary Issue – Inappropriate Behaviour by the Landlords during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

The landlords spoke for most of the hearing time, as compared to the tenants. The hearing took 69 minutes because the landlords were disruptive and argumentative throughout the hearing.

The landlords interrupted me and argued with me throughout the hearing. The landlords laughed and spoke to each other, while I was speaking during the hearing. I repeatedly asked the landlords to stop interrupting and to allow me to speak. I notified them that I could not hear when more than one person was speaking at a time. I informed them that I needed to be able to speak without interruption, in order to conduct the hearing. When I asked the landlords to allow me to speak, they continued to interrupt me. The landlords also interrupted and argued with the tenant, while she was speaking during the hearing. The landlords continued with their inappropriate behaviour throughout the hearing.

The landlords became extremely upset when I asked them relevant questions about the tenancy, constantly arguing with me and interrupting me. When I asked the tenant the same questions about the tenancy, the landlords interrupted the tenant and argued about her submissions. However, I allowed the landlords to attend the full hearing, despite their inappropriate and disruptive behaviour, in order to allow them to present their application and to respond to the tenants' application.

I caution the landlords to not engage in the same inappropriate behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and they may be excluded from future hearings. In that case, a decision will be made in the absence of the landlords.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' security deposit?

Are the tenants entitled to a return of a portion of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2019 and ended on October 4, 2020. A written tenancy agreement was signed by both parties. The landlords sold the rental unit to new buyers. Monthly rent in the amount of $1,350.00 was payable on the first day of each month. A security deposit of $675.00 and a pet damage deposit of $300.00 was paid by the tenants. The landlords continue to retain the full security deposit of $675.00 and returned the full pet damage deposit of $300.00 to the tenants. No move-in or move-out condition inspection reports were completed by both parties for this tenancy, only visual inspections were completed, since the condition of the rental unit was acceptable. The landlords completed and signed their own move-in and move-out condition inspection reports, which were not signed by the tenants. The landlords' application to retain the tenants' security deposit was filed on November 18, 2020.

The tenant claimed that a written forwarding address was provided to the landlords on September 30, 2020, by way of a letter that was left in the rental unit mailbox, as per the landlords' instructions, which was picked up by the landlords on October 1, 2020. The tenant stated that the landlords sent a text message to the tenants on October 1, 2020, indicating that they had picked up the letter.

The landlord claimed that he received the above letter but did not read it because it was not addressed to the landlords and he did not know it contained a forwarding address. He said that he was told by the tenant to deliver the letter to the realtors, which he did. He stated that he received the tenants' forwarding address in the tenants' application, where this letter was also provided, so he read it at that time.

The tenant claimed that the tenants provided written permission to the landlords on September 2, 2020, to keep the tenants' security of $675.00 towards a half month's rent for October 2020, since the tenants were supposed to leave the rental unit on October 15, 2020. She said that the tenants revoked this permission on September 30, 2020, in the same letter with the forwarding address which was given to the landlords, indicating the tenants were vacating on October 4, 2020, and would allow the landlords to keep $175.00 from the security deposit for rent from October 1 to 4, 2020.

The landlord stated that the landlords had permission to keep the tenants' entire security deposit of $675.00 for half of October 2020 rent, as per the written agreement on September 2, 2020. He claimed that the tenants were supposed to move out on October 15, 2020, and provided short notice to vacate to the landlords, since the tenants made "side agreements" with the buyers of the house.

The landlords seek a monetary order of $2,025.00 plus the $100.00 application filing fee. The landlords seek $1,350.00 for September 2020 rent and $675.00 for half a month of October 2020 rent, totalling $2,025.00. The tenants dispute the landlords' application.

The tenants seek the return of $500.00 from their security deposit and the $100.00 application filing fee. The tenants agreed that the landlords are entitled to retain $175.00 from their security deposit for October 1 to 4, 2020 rent. The landlords dispute the tenants' entire application.

The female landlord testified regarding the following facts. The landlords sold the rental unit to buyers. The landlords had an agreement with the tenants for them to move out on October 15, 2020 but the tenants left earlier on October 4, 2020, because they made a side agreement with the buyers of the house to get a free month of rent. The landlords did not give the tenants a Two Month Notice to move out. Out of the "goodness of [their] heart," the landlords gave the tenants one month free rent of $1,350.00 for September 2020, as per the parties' written agreement, dated September 2, 2020, since the landlords sold the house. But because of the tenants' "excessive greed" which was "off-putting," the landlords no longer agree that the tenants are entitled to free rent for September 2020. The landlords filed this application in response to the tenants' application for the return of their security deposit. Since the tenants want to strictly follow the *Act* by filing their application, the landlords want the full rent for September and October 2020 from the tenants. All of the "side agreements" made by both parties are void because the parties cannot "thwart the *Act.*" Therefore, the agreement from September 2, 2020 is void and of no effect.

The tenants dispute the landlords' application. The tenant stated that the only reason the tenants vacated the rental unit is because the landlords were selling the house. She said that the tenants had no plans to move because the tenant was pregnant with her second child. She maintained that the tenants are entitled to one month free rent compensation of $1,350.00 for September 2020 because the landlords sold the house, so it is a legal entitlement. She explained that the tenants are not required to pay for half of October 2020 rent of $675.00 because they vacated the rental unit on October 4, 2020, so the landlords are only entitled to $175.00 for rent from October 1 to 4, 2020.

Analysis

Landlords' Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

During the hearing, I notified the landlords that as the applicants, they were required to present their application, as per the RTB *Rules of Procedure.* The following rules are applicable and state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

I dismiss the landlord's application of $1,350.00 for September 2020 rent, without leave to reapply. I find that the landlords agreed that the tenants were entitled to one month free rent of $1,350.00 for September 2020 because the landlords were selling the

house. This written agreement, dated September 2, 2020, includes both parties' names and is signed by both tenants. The landlords agreed during the hearing that they made this agreement. The landlords were not required to make this agreement, nor were they forced to do so. The landlords only regretted this agreement after they received the tenants' application, stating that the tenants were engaged in "excessive greed." I find that the landlords made the agreement of their own free will and they do not have a valid reason to revoke their agreement simply because they are upset by the tenants' application, which the tenants are legally entitled to file under the *Act*.

I dismiss the landlord's application of $675.00 for half of October 2020 rent, without leave to reapply. I find that the landlords failed to provide sufficient evidence that they suffered a rent loss of $675.00. The landlords sold the rental unit to new buyers. The landlords did not re-rent the unit to new tenants.

I find that the landlords are only entitled to retain $175.00 from the tenants' security deposit of $675.00, for four days of rent from October 1 to 4, 2020, as agreed to by the tenants prior to and at the hearing. The tenants only occupied the rental unit until October 4, 2020 and then moved out, according to both parties. I find that the tenants are only required to pay for rent while they were occupying the rental unit.

As the landlords were mainly unsuccessful in their application, except for what the tenants agreed to pay prior to the hearing, I find that the landlords are not entitled to recover the $100.00 filing fee from the tenants.

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the testimony and evidence of both parties. The tenancy ended on October 4, 2020. The landlords' application to retain the deposit was filed on November 18, 2020.

I find that the landlords only had written permission to retain $175.00 from the tenants' security deposit, not the full $675.00. The tenants initially provided written permission for the landlords to retain their entire security deposit of $675.00 in the September 2, 2020 agreement. However, I find that the tenants revoked this permission in writing on September 30, 2020 in their letter, and again in their application for this hearing, filed on October 19, 2020. Although the landlords claimed that they did not read the September 30, 2020 letter initially, they did so when they received the tenants' application. The landlords also received and read the tenants' application. The tenants' application clearly states that they are only seeking the return of $500.00 from their deposit, since the landlords could keep $175.00 from their deposit for October 1 to 4, 2020, rent. I find that the tenants provided a valid reason to revoke their initial agreement, as the tenant explained during the hearing that the tenants moved out on October 4, 2020, rather than October 15, 2020, so they did not owe half a month's rent to the landlords, only four days of rent.

During the hearing, both parties heavily contested the service of the forwarding address and spent a lot of hearing time on this evidence. I find that the tenants did not provide sufficient evidence to show that they provided a written forwarding address specifically to the landlords on September 30, 2020, by way of a letter. The landlords agreed that they received the letter but stated that it was not addressed to them and they did not read it until it was contained in the tenants' application for this hearing. The landlords maintained that they received the forwarding address on the tenants' application for dispute resolution, which I find is not a permitted method of service, as per section 88 of the *Act*.

Therefore, I find that the doubling provision for the security deposit was not triggered without a proper written forwarding address from the tenants. Accordingly, I find that the tenants are not entitled to double the amount of their security deposit.

Although the landlords' right to retain the security deposit for damages was extinguished for failure to complete proper move-in and move-out condition inspection reports with the tenants, as required by sections 24 and 36 of the *Act*, the landlords did not apply for damages, only unpaid rent in their application.

The landlords continue to hold the tenants' security deposit of $675.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act*, I find that the tenants are entitled to the return of $500.00 from their security deposit from the landlords. I order the landlords to retain $175.00 from the tenants' security deposit for rent from October 1 to 4, 2020.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I order the landlords to retain $175.00 from the tenants' security deposit of $675.00.

I issue a monetary order in the tenants' favour in the amount of $600.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 *Residential Tenancy Act*.

Dated: February 23, 2021

Residential Tenancy Branch