Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the landlord: MNDCL-S, FFL
For the tenant: MNDCT MNSD, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the "landlord's Application") on December 15, 2020 seeking an order granting compensation for monetary loss or other money owed. Additionally, they applied for the return of the filing fee.

The landlord provided they sent the Notice of this hearing and their prepared evidence to the tenant. The tenant confirmed receipt of the same.

The tenant filed an Application for Dispute Resolution (the "tenant's Application") on February 19, 2021 seeking an order to return the security deposit, and compensation for other money owed. Additionally, they requested a return of the cost of te filing fee for their application.

The tenant provided the landlord notice of this hearing via registered mail sent on March 3, 2021. The landlord confirmed receipt of the hearing information and evidence provided by the tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 23, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing.

Issue(s) to be Decided

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

Is the landlord entitled to recover the filing fee pursuant to s. 72 of the *Act*?

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

Is the tenant entitled to recovery of compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

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

Background and Evidence

The parties had a tenancy agreement in place, jointly signed on February 17, 2020 for the tenancy starting on March 1. The monthly rent was $1,600 per month payable on the first. The tenants paid a security deposit of $800 on March 1. The agreement also specifies that the tenant was to pay 30% of utilities.

The tenancy agreement is specific in part 14 about the way in which a tenant may end the tenancy. This is "by giving the landlord at least one month's written notice."

The tenancy ended on August 1, 2020. This came from the tenants giving a letter dated July 9, 2020, specifying the final date of August 1. The tenants provided that they were ending the tenancy in such fashion because of the "untenable and unconscionable conditions created by the landlord." These were issues with parking, shared space, and placement of a waste bin.

The tenants also listed their disagreement with the landlord's withholding the security deposit because of an early end to the tenancy. They set out that they did not give permission to the landlord to keep the deposit, and there is no condition providing for this in the tenancy agreement.

Here the landlord claims the full amount of the security deposit. This is recompense for the tenants giving less than 30 days' notice that they were ending the tenancy. They draw attention to the agreement and claim that the tenants are actually liable for one full-month rent.

In the hearing, the landlord stated they went without the entire month of August rent because of the late notice.

The landlords also presented an outstanding amount for utilities, at $155.91. This is shown on an invoice for the billing date July 24, 2020.

For clarity, the landlords stated they were claiming only $800, and this was “just to be fair.”

The tenant’s response to this is essentially their claim for the return of the security deposit. In the discussion immediately prior to the tenant’s letter of July 9, the landlord was not able to explain why the tenants would automatically lose the security deposit. In the tenant’s submission, the landlord was aware of the reasons for ending the tenancy.

The tenants thereafter applied for dispute resolution. This was for the return of the security deposit. The tenants’ own forwarding address appeared on their Application in that process. This is the forwarding address that they provided to the landlord on August 28, 2020 on the previous dispute application and the tenants here state this was confirmed by the Arbitrator in the prior hearing.

In that hearing, the tenants confirmed they did not provide their forwarding address to the landlord prior to their Application for that hearing. The Arbitrator ruled that the landlord was thus served with the tenant’s forwarding address in the notice of that hearing. This was the first time that information was available to the landlord.

The Arbitrator was explicit on the point that the actual hearing date of December 10, 2020 was the exact date the landlord received that address information. From December 10, the landlord had 15 days to either refund that deposit, obtain the tenant’s consent for any deduction, or file a claim against that security deposit.

This present dispute is the landlord’s claim against the deposit, filed on December 15, 2020. The tenants here cross-applied for double the amount of the deposit, because of the landlord’s failure to claim against the security deposit when they initially received the tenants’ forwarding address on the Notice for Dispute Resolution sent to them on August 28, 2020. Referring to a specific part of the prior Arbitrator decision, the landlord here states: “The forwarding address was confirmed to have been received by the landlord on 28 August 2020 and again on 10 Dec 2020 as per the decision attached.”

Analysis

From the testimony of the parties I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the paid security deposit.

The *Act* s. 45 covers how a tenant may end either a periodic tenancy or fixed-term tenancy. It provides that a date shall not be earlier than one month after the landlord receives the notice. After the end of the fixed term, the agreement between the parties here is explicit on the point that the tenants must give notice "at least one clear month before the end of the term."

Here, the landlord did not receive the notice from the tenants in a timely fashion, and not within these prescribed timelines. For this reason, I find the landlord is entitled to the amount of August rent. The tenant is legally obligated to pay this amount of rent, as per s. 45 and the agreement between the parties. Minus any approval from the landlord, the tenants are obligated to pay August rent. Disagreements between the parties do not abrogate this essential responsibility for the tenants.

For this reason, I find the tenant is legally obligated to pay the full month of rent for the month of August 2020.

Additionally, the landlord claimed $155.91 for utilities owing. The landlord provided a copy of the bill in question. From this evidence, and the agreement between the parties, I find the tenants are responsible for this payment. It stems from the specific term in the tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

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.

I find the landlord has established that a monetary loss exists and its value. By accepting $800 here, I find the landlord has mitigated their monetary loss.

Finally, the landlord has claimed against the security deposit full amount they are withholding as of the time of this hearing. The tenants submit the landlord is precluded from doing so because they provided their address much earlier on August 28 to the landlord, and the landlord did not initially make their claim within 15 days.

The Arbitrator in the prior dispute set their December 10 decision date as the forwarding address date. The Arbitrator was authorized to make that decision by s. 62(3) of the *Act*. Additionally, s. 38 is clear on the responsibility of the tenant to provide a forwarding address. Where that did not happen, the Arbitrator has the authority to make a provisional ruling in the situation. I follow the prior Arbitrator's ruling and uphold that decision; therefore, the date of forwarding address to the landlord is December 10, 2020.

The landlord here made their claim within 15 days and have the legal right to do so. The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $800. After setting off the security deposit amount of $800, this leaves no balance remaining. I am authorizing the landlord to keep the full amount of the security deposit; there is thus no award for compensation here. I dismissed the tenants' claim here without leave to reapply.

The tenants also claimed for the return of the prior hearing's Application filing fee. They were not successful in their Application. In line with this, I find the tenants are not entitled to the Application filing fee for that dispute. Similarly, for this present dispute: the tenants here are not successful in their Application and therefore not entitled to the Application filing fee. These pieces are dismissed without leave to reapply.

As the landlord is successful, I find that the landlord is entitled to recover the $100.00 filing fee paid for the landlord's Application.

Conclusion

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $100. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 s. 9.1(1) of the *Residential Tenancy Act*.

Dated: April 30, 2021

Residential Tenancy Branch