Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- A return of personal property pursuant to section 67;
- A return of all or a portion of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant spent the bulk of the hearing yelling obscenities, ranting and interrupting other speakers. Despite being made aware of Residential Tenancy Rule of Procedure 6.10 regarding interruptions and inappropriate behaviour the tenant continued to act in a rude and hostile manner. Due to the tenant's disruptive conduct their line was muted for the balance of the hearing except for the purposes of providing testimony, making submissions, cross-examining the respondent and responding to direct questions.

At the outset of the hearing the landlord submitted that the two named respondents are actually one individual who goes by the two given names. The tenant disputed the landlord's submissions, believing that the two named respondents are separate individuals who ought to be individually named. As the tenant did not consent to the amendment and I have been provided insufficient documentary evidence to support the landlord's position I decline to amend the style of cause by changing the name of the respondents.

At the outset of the hearing the parties did confirm that the dispute address listed in the application is incorrect and provided the correct address. The corrected address is used in the style of cause for this decision.

The landlord testified that they were served with the tenant's application and evidence. Based on the testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act.

The landlord testified that they served the tenant by registered mail sent on April 15, 2021 to the service address provided on the Notice of Application. The landlord submitted a valid Canada Post tracking receipt into evidence. The tenant disputed that they were served with the landlord's evidence.

Pursuant to section 88(c) of the *Act* sending materials by registered mail is an acceptable method of service of documentary evidence. Section 90(a) provides that materials served by mail is deemed received on the fifth day after it is mailed. As noted in Residential Tenancy Policy Guideline 12 the refusal or failure of a party to accept or pick up items sent by registered mail does not override the deemed service provisions of the *Act*. Accordingly, I find that the tenant is deemed served with the landlord's evidence on April 20, 2021 in accordance with sections 88 and 90 of the *Act* and in any event has been sufficiently served pursuant to section 71(2)(b) of the *Act* on that date.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?
Should the landlord be ordered to return any personal property?
Is the tenant entitled to a return of all or a portion of the security deposit?
Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed term tenancy began on June 1, 2020. Monthly rent was $2,050.00 payable on the first of each month. A security deposit of $1,025.00 was paid at the start of the tenancy and is still held by the landlord.

There was a previous decision under the file number on the first page of this decision wherein the landlord was issued an Order of Possession on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord obtained a Writ of Possession and the tenancy ended March 3, 2021.

The tenant failed to participate in a move-out inspection despite correspondence between the parties setting a time for an inspection, initially on February 28, 2021 at 12pm. The landlord testified that the tenant was offered a subsequent opportunity when the tenancy was ending on March 3, 2021 but failed to participate on that occasion. A copy of the condition inspection report prepared by the landlord in the tenant's absence was submitted into evidence along with photographs of the suite and email correspondence scheduling an inspection.

The tenant now claims a monetary award of $7,828.60 stating in their application:

> I was illegally evicted from my apartment by my Landlords. They claimed they served a "Notice to End Tenancy" by registered mail but I did not receive the notice. Despite that committed to forceful removal of myself and my stuff. Resulting in several lost items and great monetary loss.

The tenant has submitted into documentary evidence some receipts for items they claim they purchased but were unable to recover from the rental unit. The tenant notes an electric bicycle as a specific item they seek returned. The landlord provided correspondence from the bailiff who seized and stored the tenant's possessions stating that the tenant took possession of all items on the morning of March 3, 2021 as well as photographs clearly showing the tenant riding their electric bicycle away.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

This tenancy ended by way of an Order of Possession issued in the earlier decision under the file number on the first page of this decision. The tenant now characterizes the end of the tenancy as an "illegal eviction" and claims they were not served with the Notice to End Tenancy. I find the tenant's submissions to not be supported in any documentary materials, have no air of reality and in any event be *res judicata* as the issue of service was conclusively determined in the earlier decision. I do not have the authority to redetermine a matter that has been conclusively decided.

I find no breach of the Act, regulations or tenancy agreement on the part of the landlords that would give rise to a basis for a monetary award. I find the landlords took steps as required under the Act to obtain an Order of Possession, enforce that Order and seize the goods and chattels left in the rental unit. I accept the evidence that the tenant took possession of their items on March 3, 2021 and find no basis for a monetary award or return of personal possessions. Accordingly, I dismiss this portion of the tenant's application.

I note that the evidence demonstrates that the tenant recovered all personal possessions from storage on March 3, 2021 and the tenant filed their present application seeking a monetary award and return of personal possession on March 4, 2021. I find that the tenant was aware that there was no basis for their application as they had retrieved their personal possessions the day before but chose to file their application for dispute resolution. I find the tenant's filing of an application for a return of personal possession and monetary award for their loss when they have reclaimed all items the day prior to be an abuse of the process and conduct worthy of censure and rebuke.

The parties confirm that the tenant did not participate in a move-out inspection. I am satisfied with the evidence by way of the correspondence submitted and the testimonies that the parties had originally scheduled a move-out inspection for February 28, 2021 at 12pm and subsequently on March 3, 2021 when the tenancy ended.

Section 36(1) of the Act provides that the right of a tenant to a return of the security deposit is extinguished if a landlord complies with section 35(2) of the Act in providing the tenant with 2 opportunities for an inspection and the tenant does not participate on either occasion.

Accordingly, as the tenant failed to participate in a move-out inspection despite being provided at least 2 opportunities by the landlord I find the tenant has extinguished their

right to a return of the security deposit for this tenancy. The landlord is therefore entitled to retain the full $1,025.00 amount of the security deposit for this tenancy.

As the tenant was unsuccessful in their application they are not entitled to recover their filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord is authorized to retain the full amount of the security deposit for this tenancy.

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: June 11, 2021

Residential Tenancy Branch