Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On July 31, 2020, the Tenants made an Application for Dispute Resolution seeking a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants' Application was originally set down for a hearing on November 20, 2020 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decisions dated November 21, 2020 and February 8, 2021. This Application was then set down for a final, reconvened hearing on May 3, 2021 at 9:30 AM.

The Landlord attended the final, reconvened hearing; however, the Tenants did not appear at any point during the 13-minute teleconference. At the outset of all the hearings, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, M.L. advised that the Tenants' evidence was served with the Notice of Hearing package on August 12, 2020 by registered mail. Digital evidence was included but the Tenants did not check to see if the Landlord could listen to this

evidence prior to sending it, pursuant to Rule 3.10.5 of the Rules of Procedure. The Landlord confirmed that he received this evidence package; however, he was unable to hear the contents of the digital evidence as it was garbled. Based on this undisputed evidence, I am satisfied that the Landlord received the Tenants' evidence. However, as the Tenants did not comply with Rule 3.10.5 and as the Landlord was not able to listen to the audio recording, only the Tenants' documentary evidence will be accepted and considered when rendering this Decision.

The Landlord advised that he served his evidence to the Tenants by registered mail on or around the first week of November 2020 and the Tenants confirmed that they received this evidence on November 12, 2020. Based on this undisputed evidence, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The Landlord made submissions with respect to damages to the rental unit; however, he was advised that this was the Tenants' Application and that his claims could not be heard. He was informed that he must make his own Application if he was seeking compensation from the Tenants for damages.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2014 and ended when the Tenants gave up vacant possession of the rental unit on July 31, 2018. Rent was established at an amount of $1,900 per month and was due on the first day of each month. A security deposit of $800.00 and a pet damage deposit of $800.00 were also paid. Only the first page of the tenancy agreement was submitted as documentary evidence.

M.L. advised that a forwarding address in writing was provided to the Landlord at the move-out inspection on July 31, 2018 and that B.L. and D.G. were not there to witness this. She played an audio recording of this move-out inspection, where it is her belief that this proves she provided this address in writing on that day. She stated that the Landlord sent a text message on August 4, 2018 refusing to accept the forwarding address in writing, so she then posted a new one to the Landlord's door on August 23, 2018 with B.L. as her witness. She stated that the reason they waited until the very last day possible to make this Application, in accordance with Section 60 of the *Act*, is because she became estranged from B.L. and D.G. due to family issues and they were not communicating. The Tenants are seeking compensation in the amount of double the security and pet damage deposits.

The Landlord advised that B.L. and D.G were the Tenants according to the tenancy agreement and that M.L. was never a tenant of the property. He stated that all three of them were present for the move-out inspection report and that he was never provided with a forwarding address in writing then. Regarding the audio recording that was played, he stated that he could not understand the dialogue as it was difficult to hear. He submitted that he got married on August 25, 2018 and there were many people on the property around that time. The Tenants would not have been able to drop off their forwarding address in writing on August 23, 2018 without being seen by anyone or without the dogs on the property barking. It is his position that he was never provided with a forwarding address in writing.

During the reconvened hearing of February 8, 2021, M.L. advised that the Tenants were seeking compensation in the total amount of **$7,668.00** and the Landlord confirmed that he understood the nature of these claims.

She advised that this total amount of compensation was broken down into two components. The first component was for **$2,700.00** because the Landlord increased the rent by $300.00 per month three weeks after she moved into the rental unit on October 1, 2017. She stated that this was a verbal increase, that the Landlord did not amend the tenancy agreement, and that no rent increase forms were ever used by the

Landlord. She submitted that there was no evidence that she was simply an occupant of this tenancy and she acknowledged that she was aware of the rules regarding rent increases at the time the Landlord made this request. The Tenants are seeking compensation for this illegal rent increase for the nine months until the tenancy ended.

D.G. confirmed that he and B.L. rented the rental unit and M.L. would occasionally stay there. However, he stated that M.L. brought a trailer onto the property in 2017, that M.L. moved into the rental unit, and that they then moved into the trailer.

The Landlord advised that D.G. insisted on paying rent in cash and that M.L. moved onto the property with a trailer on October 1, 2017. He stated that there was no talk of M.L. moving onto the property and M.L. actually moved into the rental unit, while D.G. and B.L. moved into the trailer. He submitted that M.L. moving onto the property was never authorized and that M.L. begged to stay by asking him what it would take to accommodate her. He stated that M.L. offered to pay $300.00 per month extra to stay. As well, he stated that the trailer was hooked up to electricity and the septic tank without authorization.

The second component of the Tenants' claim for monetary compensation is in the amount of **$4,968.00**, which is calculated as $3.45 per day for the duration of the four-year tenancy. M.L. advised that the Landlord's shop was hooked up to the same electrical panel as the rental unit, and as a result, the Tenants have been paying for the cost of the utilities that the Landlord uses in the shop. She stated that the Landlord always had someone working in the shop.

The Tenants hired an electrician to investigate on December 18, 2017 and a letter from this company, dated April 18, 2018, indicated that the workshop circuit was running off the electrical panel of the rental unit. This letter was submitted as documentary evidence. As well, a hydro energy consumption graph was submitted to demonstrate spikes in electricity usage. M.L. stated that she only realized this in the summer of 2017 when her grandparents brought a trailer onto the property, and she testified that she did not take any action regarding this discovery at the time.

The Landlord advised that there is no electrical connection from the shop to the rental unit and the picture submitted by the Tenants is of an ethernet connection. He stated that the Tenants did not have authorization to hook up a trailer to the rental unit and that the date of the electrician's letter submitted by the Tenants happens to coincide with an eviction notice that they were given. He submitted that D.G. had run his own electrical wire to the shop for music. He stated that he was not in the country during the hydro

spikes noted by the Tenants, and that the unauthorized trailers that the Tenants brought onto the property could account for those spikes. He did confirm that he had employees working at the shop; however, that was only occasionally. Finally, he noted that he contacted the hydro company regarding the spikes in electricity and he was informed that due to the remoteness of the rental unit, there was poor network range and communication, which could explain the uneven usage. As a result, the company put in a new meter on March 31, 2017. The Landlord submitted documentary evidence to support his position.

During the final, reconvened teleconference call scheduled to be heard on May 3, 2021 at 9:30 AM, only the Landlord attended the hearing. He did not make any further submissions. The Tenants did not appear at any point during this 13-minute teleconference.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?

- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, when faced with contradictory testimony and positions of the parties, I must turn to a determination of credibility.

The first issue I will address pertains to the Tenants' request for compensation in the amount of $2,700.00 for what they believe is an illegal rent increase. The undisputed evidence before me is that the tenancy agreement only lists B.L. and D.G. as Tenants and that M.L. moved into the rental unit in October 2017 without authorization from the Landlord. Furthermore, there is no evidence of an amendment to add M.L. as a tenant on the tenancy agreement. Without compelling evidence that M.L. is a tenant to this tenancy, I am satisfied that she is simply an occupant of the Tenants and she has no rights or obligations under the tenancy agreement. Therefore, she has been removed from the Style of Cause, on the first page of this Decision, as an Applicant on this Application.

With respect to the Tenants' request for compensation for an illegal rent increase of $300.00 per month for nine months, I note that M.L. acknowledged that she was aware of the *Act* and the rules regarding rent increases at the time this happened. However, she did nothing to raise this as a concern at the time, and this amount was simply paid. I also note that the Tenants waited until the very last day possible, under Section 60 of the *Act*, to make this Application.

In my view, if M.L. was aware of the requirements for proper rent increases at this time, I find it curious why she would have allowed the Tenants to pay this extra amount instead of raising this concern and advising them that this would constitute an illegal rent increase. This would have effectively mitigated any loss that may have occurred had this been determined to be an illegal rent increase. The lack of any action causes me to doubt that it was the Tenants' belief that this was an illegal rent increase at the time this was implemented. Furthermore, if the Tenants' truly believed that this was an issue, it is not clear to me why they waited until the last possible day to make this Application. I find that the dubious nature of the Tenants', and M.L.'s, submissions cause me to question their credibility, truthfulness, and reliability on the whole.

As I am satisfied that M.L. was an occupant of the Tenants, I find it more likely than not that the Landlord's testimony, that M.L. asked to pay an additional $300.00 per month to stay as an occupant, carries more weight. As such, I am not satisfied that this was an illegal rent increase and I dismiss the Tenants' claim on this point in its entirety.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

As noted above, the burden of proof is on the Applicants to provide sufficient evidence to support their claim. With respect to the provision of a forwarding address in writing, I do not find that the Tenants have submitted persuasive or compelling evidence that they served their forwarding address in writing to the Landlord. When listening to the audio played by M.L. during the initial hearing, I was unable to discern any dialogue that confirms that a forwarding address in writing was provided.

Moreover, had the Tenants provided a forwarding address in writing as they allege, it is not clear to me why they did not make an Application for double the deposits fifteen days after they allegedly provided this forwarding address in writing. Given that they waited until the last possible day to make this Application, I find that this appears increasingly like a deliberate attempt by the Tenants to intentionally put the Landlord at a disadvantage. As I am already doubtful of their credibility, I am not satisfied on a balance of probabilities that they provided the Landlord with their forwarding address in writing. As such, pursuant to Section 39 of the *Act*, I find that the Landlord is entitled to retain the security deposit and pet damage deposit.

Finally, with respect to the Tenants' claim in the amount of $4,968.00 for what they indicated as hydro theft, I find it important to note that the Tenants brought multiple trailers onto the property without the Landlord's consent. As the burden of proof rests on the Tenants, I do not find that they have demonstrated how these additional vehicles could not have been responsible for the increase in power usage. In addition, when reviewing the totality of the evidence submitted, I am not satisfied that the Tenants have adequately established their claim for theft of hydro, on a balance of probabilities.

Moreover, M.L. advised that neither she nor the Tenants took any action after they believed the hydro was being stolen. By addressing this issue at the time, this would effectively be an effort to mitigate any loss. However, as I am doubtful of their credibility overall, and as they made this claim on the very last day possible, I find the legitimacy of their submissions to be suspect. As such, I dismiss this claim in its entirety.

As the Tenants were not successful in these claims, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

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 2, 2021

Residential Tenancy Branch