Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

The tenant filed their Application for Dispute Resolution (the "Application") on January 15, 2021 seeking a return of the security deposit, compensation for monetary loss or other money owed, a return of personal property, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 18, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity ask questions and present oral testimony during the hearing. At the outset, both parties confirmed they received the prepared evidence of the other; on this basis, the hearing proceeded.

Preliminary Matter

On the Application, the tenant provided that they do not have personal property to be returned. I so amend the Application to omit this particular claim.

Issue(s) to be Decided

Is the tenant entitled to compensation for monetary loss, pursuant to s. 67 of the *Act*?

Is the tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed, one-year tenancy began on May 1, 2010, renewed each year as a subsequent fixed one-year tenancy. The rent at the start of the agreement was $1,150. At the time of the end of the tenancy, the rent was $1,500.

At the beginning of the tenancy, the landlord collected a security deposit of $575 and a pet damage deposit of $200.

i. return of October rent amount paid, $750

Both parties submitted that the tenancy ended by mutual agreement. A document for this purpose was presented by the tenant to the landlord on September 13, 2020, and both parties signed on that date for the end of tenancy on September 30, 2020. Prior to this the landlord had messaged to the tenant that they were going to issue a two-month notice to end the tenancy based on their sale of the home. The landlord messaged to the tenant about this; however, the landlord did not serve such notice to the tenant.

Both the landlord and the tenant presented the tenant's September 13, 2020 letter showing their proposal for this end-of-tenancy agreement to the landlord. In the letter they stated: "I would appreciate not being charged October rent." The tenant attached this to the landlord's own unit door on September 13, 2020, combined with a form which the landlord could complete and sign – the Mutual Agreement to End Tenancy. The tenant filled in the form – including the date – prior to attaching it to the landlord's door.

On September 14, the landlord messaged the tenant. A copy of this message appears in the landlord's evidence. This shows:

> Thank you for the notice you posted on my door informing me of your intentions. However I am entitled to one months notice. This is just over two weeks notice. If as you say you'll be out September 30th by 1PM, I will compromise with you paying me ½ months rent for October and I'll sign the mutual agreement to end tenancy form you've submitted to me.

The tenant responded to this:

> That sounds like a fair agreement. If you could return my post dated cheques with the signed copy [of the Mutual Agreement to End Tenancy] I will give you a new one [i.e., a cheque] for half of October's rent and still vacate by the 30th [of September].

In a separate written submission, the tenant provided that "I decided to try to opt for a mutual agreement. [The landlord] childishly declined asking for half of October's rent even though [it] was [the landlord] who improperly served notice in the first place. If [the landlord] had served an eviction notice properly I would have been entitled to October for him evicting me for use of the unit. Again, I just wanted this settled and over so I agreed to pay half of October."

The tenant's claim here is for the return of this one-half-month rent amount they paid to the landlord, with the money withdrawn on October 2. As stated in their Application: "I later discovered that [the landlord] accepting this [*sic*] funds could void the agreement or would allow me to stay until Oct 15. I was not allowed to stay past Sept 30 and therefore want this money returned."

The tenant provided a message they received in answer to their query to the Residential Tenancy Branch on September 22. The branch representative provided in their email: ". . . in the event that the mutual agreement is considered invalidated due to an exchange of money for October, the landlord may be held responsible for providing the two month notice and delaying the end of tenancy further." Further: "Please note that accepting rent for a new month may reinstate your tenancy and invalidate the mutual agreement."

The tenant also provided messaging from the landlord showing that they had contractors coming to the unit on October 1. The tenant had raised an issue with the elevator malfunctioning which interrupted their move; they asked the landlord for more time for this reason. This added pressure to them keeping with the September 30 move-out date; however, the parties met for a final walk-through meeting on September 30. In response to the tenant's concern about the pending September 30 date, as agreed upon, the landlord responded: Yes, please do your best, I'm Happy to work through this with you but we have a written agreement as per your request."

In the hearing, the landlord reiterated that the $750 payment by the tenant was part of the mutual agreement. When they received the agreement – unsigned – their reaction was that they "have to think about it." They re-stated the tenant's own message to them which states: "That sounds fair." They signed the agreement based on this assertion from the tenant that they would pay this – "that's the intent of the agreement."

About the very end-date of the tenant's move, the landlord stated they were "happy to work it through" with the possibility of the tenant needing more time to move their items out. They did

not “deny” access to the tenant after September 30 and had no intention for the tenant to not stay past September 30.

ii. return of security deposit and pet damage deposit, $1,640

After the end of the tenancy, the landlord filed a claim against the tenant for damages to the rental unit, discovered after the tenant moved out. The landlord applied to retain the security deposit, to apply that deposit against the amount of damages they presented to the previous Arbitrator. After the move-out date of September 30, the landlord filed that prior Application on October 9, 2020.

The Arbitrator conducted that hearing on January 29, 2021. On February 1, 2021 they awarded the amount of the security deposit to the tenant and provided a Monetary Order for that amount. This was a return of the full amount of the deposits ($775) to the tenant, minus a $12.28 portion which the Arbitrator decided satisfied a certain legitimate portion of the landlord’s claim.

For this present hearing the tenant filed their Application on January 15, 2021, which was the interim period prior to the security deposit and pet damage deposit being the subject of the prior hearing between these parties.

The tenant provided a string of text messages they had with the landlord after the landlord had begun their own monetary claim. This shows the tenant informing the landlord that “You wrote my new address down and the unit number is listed on the page you took a picture of but here it is again [address].”

The tenant applies for double the deposit amounts, this is “due to the delay in getting [their] deposits back.” In their written submission they referred to the landlord’s offer of $200 of their deposit being an abuse of the dispute resolution process. The amount of their claim is $775 for the deposits combined, plus the $45 key deposit. This is $820 total, and when doubled is $1,640.

iii. harassment, $500, and loss of quiet enjoyment, $500

In their written submission, the tenant described their efforts at having the landlord stop communicating to them via text message. They focused on the timeframe toward the end of the tenancy, from August until October. In response to their requests, according to the tenant the landlord “argued that [they] had the right to communicate by text” and then simply ignored

these requests. Certain portions of these communications are “inappropriate” according to the landlord, in regard to an incident that was the catalyst for the end of this tenancy.

The tenant also referred to the conduct of the landlord during this time. They “couldn’t believe it was so disrespectful”. In a written submission – labelled as a counter-claim – the tenant sets out 5 times they asked the landlord to stop contacting by text. Based on this, they state: “I feel $500 would be justified with 5 being at least the number of times [they] contacted me by text after requesting that [they] stop.” The tenant provided images of the messaging sent by the landlord when the landlord filed their dispute resolution claim in early October, with the “last interaction” shown in their evidence being that on October 11, 2020.

The landlord responded to this to say that the frequency of messages increased toward the end of the tenancy, due to the sense of urgency with the pending end of tenancy.

Regarding their quiet enjoyment, this refers to the frequency of gatherings that the landlord hosted or was privy to, in relatively close quarters next to the tenant’s own unit. The landlord referred to these as gatherings of 4-5 people, getting together in the afternoon and early evening, “pushed close to 11 p.m.” For ongoing conversations and text messages in regard to noise, the tenant is “asking for reduced rent for these months for the disturbances. . . I am asking for $100 per month paid back to me - $500 total.”

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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. return of October rent amount paid, $750

I find the form given to the landlord on September 13, 2020 was pre-dated by the tenant, bearing the tenant's signature when they gave it to the landlord with their accompanying letter. The landlord did not return this document to the tenant until after they had the discussion about a partial rent amount to the landlord for October. The reason for the one-half rent amount is immaterial; however, the tenant agreed to it.

After this, the tenant made their query to the Residential Tenancy Branch on September 22 and received the answer that such a payment *may* void the mutual agreement. Had the tenant's agreement to this payment *not* been in place, or their agreement on October payment come *after* the mutual agreement, then its procurement would indeed be problematic. However, the evidence here is that the tenant agreed to this amount, and my finding of fact is that this was prior to the landlord's signature on the mutual agreement being in place. There is not sufficient evidence to show otherwise.

Further, the tenant then made that payment on October 1. This is after their discussion with the Residential Tenancy Branch, and after their move was complete. There was no message of protest to the landlord about this payment as forming part of the mutual agreement. On this piece of my finding the tenant was indeed obligated at this point to keep the agreement on payment; however, I find it odd that there is no record of the tenant questioning back to the landlord about staying further into October, despite the possibility of their needing more time for moving, and despite their questions to the branch about the legality of this payment.

There is no record they presented back what they learned from the Residential Tenancy Branch to the landlord. Nor did the tenant present that they in fact wished to extend the end date of the tenancy to mid-October in line with what they paid for. Instead, the dialogue shows the tenant's immediate concern about facilitating a move by September 30. I find that in response to this concern the landlord was open to providing any time needed; however, by September 30 it was clear there was no need for extra time.

I am not satisfied a loss to the tenant exists. There is not sufficient evidence to show there was a violation of the *Act* or the tenancy agreement. As tenuous as an agreement by text message may be, I find the arrangement between the parties was in place. Despite making inquiries on the legality, the tenant did not raise the issue with the landlord at the time and maintained that agreement, and they did not clearly present their need to stay longer into October to the landlord at that time.

For these reasons, I dismiss this part of the tenant's claim, without leave to reapply.

ii. return of security deposit and pet damage deposit, $1,640

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) provides that if a landlord does not comply with s.38(1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

Here I find the landlord did file a claim against the deposits within the legislated timeframe. Their initial application for this was on October 9, 2020. This was within 15 days of the landlord receiving the tenant's forwarding address at the move-out meeting, and within 15 days from the end of the tenancy. This cancels the tenant's right to double the amount of the deposits.

I find as fact the tenant received a proper monetary order in a prior hearing. This was for the amount of the security deposit, minus a legitimate claim portion granted to the landlord. I find the matter of the tenant's right to the security was resolved with this separate decision and monetary order. As such, the matter is *res judicata*, which means that prior decision is conclusive and final as to the tenant's right to the security deposit.

The portion that the tenant paid for a key deposit – here $45 – is not properly considered in the *Act* and does not receive any consideration. The *Act* s. 38 provides for dispensation of the security deposit and pet damage deposit *only*. A key deposit has no mention therein.

This portion of the tenant's claim involving the security deposit and pet damage deposit is dismissed without leave to reapply.

iii. harassment, $500, and loss of quiet enjoyment, $500

Both of these items were not specified in the tenant's Application. I find the monetary amount was attached to these pieces of their claim in a rather haphazard fashion in the hearing. I do note the tenant made submissions on these in their "counterclaim" that was not formally filed in time for it to link to the prior hearing for landlord's compensation. Despite this consideration, I discuss various aspects of the tenant's claim below to show that there is no valid claim for compensation on these submissions.

I find the tenant receiving ongoing messages from the landlord regarding many differing aspects of the tenancy does not constitute harassment. On my review of the messaging, I find no threats which amount to intimidation. Similarly, I find the landlord did not make repeated demands to the tenant that were unwavering or increasing in severity. I do note that both parties described the relationship as amicable up until a bad interaction occurred in August 2020. After this, the relationship soured; however, my review of the messages reveals chats that are focused on ending the tenancy and dealing with residual issues such as elevator scheduling. I find there is no delineation between what messages the tenant would see as harassment, and those which I find reasonable for the landlord to send in furtherance of their wanting to keep the dialogue open.

In sum, there is no basis for the claim either as an interruption to the tenant's own personal time, or other opportunities foregone as a result of this ongoing messaging. At most, the communication was bothersome to the tenant; however, I find there is no element of harassment present that would warrant some form of compensation.

I find the tenant's own access to their unit was not interrupted, nor had the value of the tenancy decreased because of frequent gatherings in adjacent units. It is not clear from the evidence whether the landlord was the key source of these more audible gatherings. I find the landlord in the hearing described what was happening to a sufficient degree, and I accept their testimony that such gatherings would have been outside their immediate control. Further, the tenant did not establish the ongoing frequency of such gatherings and the degree of noise is not defined clearly; therefore, I find they were not anything beyond discomfort to the tenant. I find the evidence does not show they were an ongoing interference or a disturbance. Without establishing this aspect of their claim, I find the tenant is not entitled to any compensation for this part.

I dismiss these pieces of the tenant's claim for compensation, without leave to reapply.

Because they were not successful in their Application, the tenant is not entitled to reimbursement of the Application filing fee.

Conclusion

For the reasons above, I dismiss the tenant's Application for the return of the security deposit, and their claim for monetary compensation. The 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 s. 9.1(1) of the *Act*.

Dated: June 9, 2021

Residential Tenancy Branch