Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord's agent and the tenant 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 43 minutes.

The landlord's agent confirmed that he had permission to represent the landlord named in this application, who is his wife.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent and the tenant both affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle both applications.

Service of Documents

The tenant confirmed receipt of the landlord's application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and notice of hearing.

The tenant stated that she did not receive the landlord's evidence package, including photographs and text messages. The landlord's agent confirmed that the evidence was sent with the landlord's application and notice of hearing, in the same package, by registered mail to the tenant's forwarding address on April 26, 2021. The landlord's agent provided a Canada Post tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence on May 1, 2021, five days after its registered mailing. I considered the landlord's evidence in this decision.

The tenant's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlord. An "interim decision," dated April 19, 2021, was issued by an Arbitrator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

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

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

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to a return of double the amount of her 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 December 1, 2019 and ended on January 31, 2021. Monthly rent in the amount of $2,000.00 was payable on the first day of each month. A security deposit of $1,000.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The landlord did not have written permission to retain any amount from the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on April 11, 2021.

The tenant stated that she provided a forwarding address to the landlord on February 6, 2021, by way of text message. The landlord's agent confirmed that he received the tenant's forwarding address, but he could not recall the date or whether he received it by email or by way of the tenant's application.

The tenant seeks the return of the double the amount of her security deposit of $1,000.00, totalling $2,000.00, plus the $100.00 application filing fee. The landlord disputes the tenant's application.

The landlord seeks a monetary order of $1,000.00 and to retain the security deposit in full satisfaction of this order, plus the $100.00 filing fee. The tenant disputes the landlord's application.

The landlord's agent testified regarding the following facts. The tenant wanted to move out at the end of December 2020, but since the landlord's agent asked for one month's notice, the tenant agreed to move out at the end of January 2021. He did a walk-through of the rental unit when the tenant moved in and there was a verbal agreement that there was no major defect. The failure to complete a move-in condition inspection report was an oversight on the landlord's part, as it should have been done. There was no move-out condition inspection report done because the tenant's brother threatened the landlord's agent with physical violence, using profane language. The landlord's agent did not want to risk his or the landlord's safety, or any agents on behalf of the landlord, so no physical inspection or report was done with the tenant when she moved out. The landlord's agent called the police non-emergency line, and since there was no crime in progress, there was nothing the police could do, so the landlord's agent was disappointed.

The tenant's family member left the keys for the landlord's agent, who completed an inspection of the rental unit on his own, one to two weeks after the tenant moved out. The landlord's agent found "tens or hundreds" of "many little holes" in the walls of the rental unit, that the tenant caused before moving out. The landlord's agent also found hair clogged in the bathtub and the toilet seat was broken. The landlord's agent got a verbal estimate, indicating that it would cost a lot more than $1,000.00. The landlord provided a text message for same. The actual cost "most likely exceeds $1,000.00" because the landlord's agent did the work on his own. The landlord's agent bought touch-up paint to patch up the holes in the walls and a new toilet seat to replace the broken one, but he does not have any receipts in front of him, so he will have to check his credit card statement after the hearing is over. The landlord did not provide any receipts or other documentary proof of costs. The toilet seat "did not cost much, only $20.00 to $30.00." The landlord's agent's time cost more than the paint and the toilet seat. It took a "couple hours" of the landlord's agent's time to find the above materials. The landlord's agent did not receive any photographic evidence from the tenant.

The tenant testified regarding the following facts. The landlord's agent was always yelling at the tenant throughout this tenancy, maybe because she is a female on her own. The tenant wanted to move out at the end of December 2020, due to the covid-19 pandemic, but she agreed to move out at the end of January 2021, because of the landlord's agent. The tenant has never treated anyone as badly as the landlord's agent, including the employees that work for her. The tenant cried because of the landlord's agent's yelling. The tenant's brother saw how upset the tenant was, so he stood up for her, but the tenant does not know what happened. The tenant cleaned properly and took videos of the rental unit. There were already holes in the wall and the landlord did

not complete a move-in report. The tenant is new to Canada, she does not know the rules here, she is educated, and she is in charge of a team of people at work. The landlord's agent is making up lies about the tenant.

The landlord stated the following facts in response to the tenant's testimony. The tenant's gender, age, education, her lack of knowledge of the rules, or her new arrival to Canada, are not relevant to this application. The tenant's brother threatened the landlord so he could not complete a move-out condition inspection or report.

Analysis

Landlord's Application

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, 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.

At the outset of the hearing, I informed both parties that the applicants in each application had the burden of proof to present their claims on a balance of probabilities. I find that the landlord's agent did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 43 minutes so the landlord's agent had ample opportunity to present the landlord's application and respond to the tenant's claims. During the hearing, I repeatedly asked the landlord's agent if he had any other information that he wanted to add to his submissions. Both parties were more focussed more on arguing with each other about the tenant's brother and why the move-out inspection did not occur.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's application of $1,000.00 without leave to reapply. I find that the landlord failed all four parts of the above test. The landlord did not provide a monetary order worksheet or any breakdown of the landlord's monetary claim. The landlord's agent claimed that the above amount was mostly for his own time, which he used to buy materials, paint the walls, and replace the toilet seat. However, he did not provide a breakdown of any hourly rate, how many hours it took, or any other such information.

I asked the landlord's agent during this hearing how much he calculated for his time and work, but he failed to answer this question or provide any details of same. I further asked the landlord during this hearing whether he had receipts or other such documents to show that he actually bought materials and completed work in the rental unit. The landlord's agent did not provide any receipts or invoices to show that he bought a new toilet seat or any paint, claiming that he would have to check his credit card statement after the hearing.

The landlord provided a text message from an unknown number and sender, indicating a cost exceeding $1,000.00. There is no rental unit address or reference to the landlord's name in this text message. In any event, the landlord's agent testified that he did not have work done by anyone in the rental unit, he said he did it all himself.

I find that the landlord did not provide a move-in condition inspection report or any photographs when the tenant moved into the rental unit. The landlord's agent stated that this was an oversight and it should have been done. The landlord only provided photographs after the tenant vacated the rental unit. Therefore, the landlord cannot show if the tenant caused the holes in the wall or the broken toilet seat.

The landlord only provided one photograph of two small holes in a wall. The landlord did not provide any photographs of the broken toilet seat, how badly it was broken, or the fact that it needed replacement. The landlord provided photographs of a broken rack and a broken switch, but the landlord's agent did not discuss these damages during this hearing.

I accept the tenant's testimony that she cleaned the rental unit and she did not cause the above damages. As per Residential Tenancy Policy Guideline 1, the tenant is only responsible for wilful or negligent damages, beyond reasonable wear and tear, to the rental unit. The tenant is not required to repaint the rental unit, unless she caused excessive holes in the walls, which the landlord did not show, by way of photographic or documentary evidence.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the $100.00 filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's 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 tenant's provision of a forwarding address in writing. If that does not occur, the landlord is 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 landlord has obtained the tenant's 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 tenant to pay to the landlord, 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 evidence of both parties. This tenancy ended on January 31, 2021. The landlord did not have written permission to retain any amount from the tenant's security deposit.

The tenant did not provide a forwarding address by text message. The text message, dated February 7, 2021, provided by the tenant indicates an email address, where the landlord can e-transfer the security deposit back to the tenant. There is no physical mailing address. The tenant was alerted to this fact, in the interim decision, dated April 19, 2021, from the Arbitrator. The tenant provided an RTB-approved form, indicating that she sent a forwarding address to the landlord by facsimile, but the tenant did not provide proof of this transmission, as noted by the Arbitrator in the interim decision. The tenant did not refer to providing a forwarding address to the landlord by facsimile, during this hearing.

However, the landlord's agent confirmed that he received the tenant's forwarding address by email or by way of the tenant's application. The landlord's agent stated that he sent the landlord's application to the tenant's forwarding address. Therefore, I find that the landlord was sufficiently served with the tenant's forwarding address, as per section 71(2)(c) of the *Act*, as the landlord received the address and served the landlord's application to that address.

The landlord's right to retain the security deposit for damages was extinguished for failure to complete a move-in condition inspection report, as per section 24 of the *Act*. However, I find that the doubling provision for the security deposit was not triggered without the tenant's use of the proper method to serve the tenant's written forwarding address to the landlord. Accordingly, I find that the tenant is not entitled to double the amount of her security deposit of $2,000.00.

The landlord continues to hold the tenant's security deposit of $1,000.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to the regular return of her security deposit of $1,000.00 from the landlord. I issue a monetary order to the tenant for $1,000.00.

As the tenant was only partially successful in her application, since she was unable to recover double the amount of her security deposit, I find that she is not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $1,000.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 *ACT Tenancy Act*.

Dated: August 9, 2021

Residential Tenancy Branch