Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution on April 15, 2021 seeking compensation for monetary loss, a return of the security deposit, and/or 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 October 18, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – disclosure of evidence

The tenant stated they delivered notice of this dispute via courier to the landlord. This was in two deliveries, with a second package delivered when they sent more evidence they intend to rely on. The landlord confirmed they received these pieces from the tenant.

The landlord stated they delivered their prepared evidence to the tenant via registered mail on October 7, 2021. The tenant stated they did not receive this because they were more recently elsewhere in Canada and did not receive mail for two weeks prior to the October 18 hearing.

The *Residential Tenancy Branch Rules of Procedure* sets out the rule for the respondent's evidence. By Rule 3.15, they must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. This is not less than seven days before the hearing. The tenant made this Application in April 2021, yet the landlord was providing their evidence to the tenant in October. I consider

the landlord's evidence to be late, as per Rule 3.15, where the landlord's evidence was *not* received by the tenant not less than seven days before the hearing.

I advised the parties at the outset of the hearing that I may or may not consider this late evidence, depending on the scenario and the way it is relied upon by either party. On any relevant piece, I would decide whether the tenant needed opportunity to review each specific relevant piece. This is an application of Rule 3.17.

Preliminary Matter – tenant offer

The tenant's written submission and evidence package for this hearing consists of 24 pages. On the final page, the tenant addresses the decision maker in this hearing, as "Dear officer". The tenant then makes a $15,000 donation offer to the Residential Tenancy Branch contingent on their "win" in this case. The $15,000 portion is a portion of the tenant's claim in this hearing.

The tenant states in this document:

- If you judge me win in the case. . . I will donate all the $15,000 cash to your Residential Tenancy Branch.
- If you judge me lose in this case. . . In this situation, I cannot donate money to the Residential Tenancy Branch, because you didn't support me.

I interpret this as the tenant's offer of cash to this office should they be successful in this hearing. In the hearing, I informed the tenant this was inappropriate. I also cautioned the tenant that an exchange of this nature is an illegal offer to an Arbitrator in the Residential Tenancy Branch. The Residential Tenancy Branch does not accept donations or offers. My decision herein is based on the evidence of each party in this hearing, and not on the tenant's offer. The impact of these statements by the tenant on my decision is set out below.

Issues to be Decided

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

Is the tenant entitled to return of the security deposit, as per 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

The parties confirmed they had a written tenancy agreement, for $1,000 per month rent. The tenant paid an initial security deposit of $500 when the tenancy started on December 1, 2020. The landlord specified in the hearing that the rent amount did not include parking. They asked the tenant to park on the street where parking was free.

The tenant described how they paid $300 at the start of the tenancy for an "electrical deposit." The landlord described this as their own system where the electricity cost is shared by the three tenants within the property. The landlord asks all tenants to pay the electrical bill, so at the outset they accept this $300 amount from each tenant, to ensure that a bill will be paid, otherwise they will pay the bill from that $300 amount.

The tenant moved in to the rental unit on December 22, 2020. The tenancy ended when the tenant moved out on January 10, 2021. The landlord in the hearing stated they did not receive a notice to end tenancy from the tenant. At the hearing, the landlord confirmed they had not returned the $500 security deposit to the tenant, nor did they return the $300 "electrical deposit".

This tenancy ended when the tenant moved out from the unit on January 10, 2021. This was a short-lived tenancy due to acrimony between the parties. The landlord issued a Notice to End Tenancy for Unpaid Rent on January 3, 2021. They also issued a One-Month Notice to End Tenancy for Cause on December 28, 2020.

The tenant claims compensation for the cost of their vehicle being towed, twice at the landlord's call, and impounded. Related to this, the tenant had to rely on taxis and public transportation, and they seek recompense of these costs as well. The landlord did not provide a designated parking spot to the tenant. In the hearing, the tenant was insistent that a parking spot belongs to the property, and because they were a tenant, they should have their own separate parking spot. As stated: "parking belongs to the house. . .we rent the house, so automatically need to use parking." The tenant was denied a parking spot, and they called this discrimination.

The landlord presented that the tenant parked their vehicle in a spot reserved for another building tenant. The tenant then did not want to move their car. A second time, the tenant used her car to block the other tenant's access to the car port. The landlord called the police who responded and informed the landlord that it was not their matter. This was followed with warning letters to the tenant, with one of them on December 26 as stated by the landlord in the hearing. After this, the landlord called the towing company.

In their written statement, the tenant provided that they "park[ed] my car at back yard to protest the landlord's discrimination." The landlord towed their car twice. The tenant showed: a December 31, 2020 towing invoice for $225.10; a January 15, 2021 storage invoice for $451.71; and a $50 release charge, undated. This totals $726.81.

The tenant presented a series of receipts for their own transportation costs, totalling $394.90. These were dates when they were without their impounded vehicle.

The tenant moved out from the unit on January 10, 2021. They hired a moving company at that time. For this, the tenant claims $850 for compensation of these moving costs. They provided an invoice for $650 from a moving company, and a January 6, 2020 receipt from an individual for $200. The tenant makes this $850 claim because the landlord, in the tenant's words, "forced" them to move out.

The tenant paid the $500 security deposit, and the $300 "electrical deposit." They claim $250 for the latter of these two, because they used the lights for the short-term duration of the tenancy, so reduced this claim by $50. This portion of the tenant's claim totals $750.

There was a prior dispute resolution process between the landlord and the tenant in January 2021. This concerned the validity of the notices to end tenancy that the landlord issued in December and January. By the time of that hearing on April 12, 2021, the tenancy had already ended. In that hearing the tenant did not claim for the $100 Application filing fee; however, related to that hearing they do so here. Additionally, they seek the return of the $100 filing fee in this present hearing.

The tenant also claims $16,000 for illness that affected their work. They presented a document listing the 7 companies they are involved with. The tenant described their work in the hearing as "education" – this rate of work is $200 per hour, for 8-hour days. For the 10 days in which they could not work, this brings the amount of this portion of their claim to $16,000. They produced a doctor's form note in which a doctor on

January 3 listed dates from January 3 to January 14 as those in which “the above person is unable to attend work . . . due to illness/injury.”

The tenant claims $15,000 for mental and emotional hurt. This is because they feel very shameful and violated by the landlord. They were never treated this way by anybody else. This was the portion of the tenant’s claim for which they offered to donate this amount to the Residential Tenancy Branch should they be successful in their claim.

The landlord responded to these latter two submissions to state their position that any problem with the tenancy was caused by the tenant. They issued a letter warning about the tenant about parking; however, the tenant did not want to talk. The landlord reiterates that the tenant did not pay rent for January 2021. The landlord also submitted that they received threats from the tenant in the form of text messages, stating the landlord would lose their house, their children would do poorly in school, and that the tenant has a relationship with a police officer. They see these messages from the tenant as harassment.

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 find the tenant had warning about parking; however, the fact is they ignored the warning from the landlord and parked against the instructions. At the outset, they were

told plainly they had to park on the street, and the rent amount did not include parking. The landlord issued a warning letter to the tenant on December 26.

I find the landlord described the situation sufficiently in the hearing: the tenant parked in a carport not reserved for them; then they blocked other tenants' vehicles by parking in front of the car port. As stated in their own submission, they parked this way to "protest the landlord's discrimination". This resulted in a tow after ample warning from the landlord.

I find the tenant was the agent of their own difficulty with parking. At three points in the hearing, their emotions became heightened in the hearing when it came to the issue of parking, and the tenant exhibited histrionics in the hearing. For some inexplicable reason the tenant was entrenched in the position that one of the parking spots belonged to them. I conclude they were so steadfast in this desire for a parking spot, and unable to understand how there was no parking available to them, that they acted irrationally.

With regard to the four points listed above, I find the landlord was not in violation of the *Act*, or the tenancy agreement. There was no agreement for a parking space for the tenant; moreover, this is not a service or facility required by law. The tenant was not able to explain why their vehicle remained impounded for thirteen days which significantly added to the cost and is not a step toward mitigation. The landlord had the tenant's vehicle towed the second time as the result of the tenant's own spite and their revengeful action, that which caused an inconvenience to other building residents.

Because of my findings here, there is no award for any costs associated with the tenant's vehicle towing or impound, or related taxi/transit costs.

The tenant did not present sufficient evidence to show they were intimidated or harassed by the landlord to the extent that they were "forced" to move out by the landlord. The landlord engaged in a process of attempting to end the tenancy. The record shows the tenant challenged that process in a prior dispute resolution process; however, by the time of that prior hearing they had moved out from the rental unit. I find this was of the tenant's own choice. There is simply no evidence of the landlord ending the tenancy outside of the legal process in place as per the *Act*. There is no violation of the *Act* in this regard; therefore, the landlord is not responsible for this cost.

I find the tenant's description of their own work was vague. In the hearing the tenant was unable to describe the nature of their work, and there is no account of their daily routine. There is also no accounting for the missed 10 days of work; the doctor's note does not indicate what the tenant's condition was – merely "illness" – and this is not sufficient evidence for a claim of this type. The tenant did not present that they were ill

to the point where they were unable to perform daily work tasks, and I am not satisfied there was an effort at mitigation, with any attempt to return to work. I find this portion of the tenant's claim is vindictive, and there is no evidence showing actual illness for actual missed work. I dismiss this $16,000 portion of the tenant's claim.

Further, I dismiss the $15,000 portion of the tenant's claim. I find this is also made with its basis in spite. There was no evidence of threats by the landlord, either in documentary form or in the testimony from the tenant in the hearing. Their description of mental and emotional hurt stemming from this tenancy is not substantiated with sufficient evidence to show this. Given the tenant's willingness to donate this amount of compensation to the Residential Tenancy Office should they be successful, I find this is a frivolous and unimportant claim from them. Here they have not proven the mental or emotional hurt to them; nor have they proven the value thereof. I dismiss this portion of the tenant's claim.

The *Act* s. 1 defines "security deposit" as "money paid. . . by a tenant to a landlord that is to be held as security for any liability or obligation of the tenant . . ."

The limit on the amount of the security deposit is set in s. 19, where the landlord "must not require or accept a security deposit. . .that is greater than the equivalent of ½ of one month's rent . . ." By s. 19(2), where this occurs, the tenant may recover this overpayment.

For the purpose of this decision, I find the tenant made an overpayment in the security deposit. The extra amount – ostensibly to secure the tenant's obligation for payment of this utility – is an overpayment. The $300 is *above* that of the s. 19 prescribed ½ amount of rent, and is recoverable by the tenant, existing as it does as an *overpayment* only. The tenant has agreed to the nominal portion for their very brief stay in the rental unit. I so deduct this from the $300 the tenant overpaid and award the tenant the remaining $250.

For the security deposit of $500, the *Act* s. 38(1) states:

> 1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay. . . any security deposit . . .to the tenant
> (d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

> 6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit . . .

I find the $500 the tenant paid initially to the landlord is the legitimate security deposit, set at ½ the monthly rent. In the hearing the landlord stated that their design was to use this security deposit amount toward the rent that was unpaid by the tenant. The landlord admitted they did not, as per s. 38(1)(d), make an application for a claim against the security deposit.

I find the final date of the tenancy was January 10, 2021. Either the tenant provided a forwarding address to the landlord at that time, or the landlord discovered that forwarding address when they received the tenant's address as part of the notice for this hearing. In either case, the landlord did *not* make an application to use the security deposit amount for any purpose. For this reason, I find s. 38(6) applies to this situation, and the landlord must pay the tenant double the amount of the $500 security deposit. I award $1,000 compensation to the tenant.

After the tenancy ended, the tenant did not amend their previous Application to contest the notices to end tenancy issued by the landlord. The tenant was not successful in their claim for compensation at that time. Because they were not successful and did not amend their application at that time, I make no award for that previous hearing Application fee.

For the tenant's Application here, I find the tenant was for the most part unsuccessful. For this reason, I make no award for reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 38 and s. 67 of the *Act*, I grant the tenant a Monetary Order for the recovery of the security deposit and other money owed. This is $1,250. I provide the tenant with this Order in the above terms and the tenant must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the

tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 *Act*.

Dated: October 19, 2021

Residential Tenancy Branch