Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On March 31, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was originally set down for a hearing on August 27, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated August 30, 2021. This Application was then set down for a final, reconvened hearing on December 20, 2021 at 9:30 AM.

Both Tenants attended the final, reconvened hearing, with S.M. attending as their advocate. However, the Landlord did not attend at any point during the 29-minute teleconference. At the outset of the hearing, 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.

During the original hearing, service of documents was an issue. As such, the parties were directed to re-serve their evidence as outlined below:

- **I Order** that each party must **re-serve** their evidence to each other in a manner in accordance with Section 88 of the *Act*.

    - This evidence must be received, or deemed received, by the other party **not less than 14 days before** the reconvened hearing.
- **I Order** that the parties must also provide the Residential Tenancy Branch with proof of these evidence packages being served to the other party.
- **I Order** that this is not an opportunity for either party to submit additional evidence. Only the evidence packages that were originally served by each party to each other will be accepted. I will not consider any further evidence submitted.

At the reconvened hearing, S.M. advised that the Landlord did not re-serve her evidence to the Tenants in accordance with the above Orders. However, he stated that the Tenants' evidence was served to the Landlord by registered mail on November 30, 2021 and that it was delivered on December 2, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Landlord did not comply with the above Orders and that the Tenants' evidence was served in accordance with those Orders in the Interim Decision. As such, I have excluded the Landlord's evidence and will not consider it when rendering this Decision. Furthermore, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

In addition, S.M. advised that he received an email from the Landlord last week which stated that she "did not give a f*** about the hearing anymore."

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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord 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.

Tenant K.D. confirmed that the tenancy started on January 13, 2020 and that the tenancy ended when they gave up vacant possession of the rental unit on January 25, 2021. Rent was established at $1,655.00 per month and was due on the first day of

each month. A security deposit of $1,000.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

K.D. advised that the Landlord did not have a move-in inspection report with her, and that the inspection was conducted verbally. However, the Tenants stated that the Landlord did have a move-out inspection report with her on January 25, 2021, 2021. A copy of the signed condition inspection reports was submitted as documentary evidence. The Tenants claimed that the Landlord fraudulently made additions to the move-out inspection report after it was conducted, and they pointed to differences in pen colour to support this position. Moreover, they noted that the Landlord has exhibited a history of fraudulently forging documents.

K.D. acknowledged that he provided their forwarding address in writing to the Landlord on the bottom of the move-out inspection report on January 25, 2021. In addition, he confirmed that he permitted the Landlord, on that move-out inspection report, to keep their deposit.

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 19 of the *Act* outlines the limits on the amounts of deposits that the Landlord is permitted to obtain. It states that “A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.”

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

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 security deposit, clearly the Landlord collected an amount that exceeded what was permitted to be collected. This appears to be an attempt by the Landlord to contract outside of the *Act* and the Landlord is cautioned that continuing to do so is in breach of the *Act*. As a note, as per Section 19 of the *Act*, any future tenant is permitted to deduct any overpayment of a deposit from future rent.

With respect to the Landlord's duty to deal with the deposit at the end of the tenancy as the undisputed evidence is that a written move-in inspection report was not conducted pursuant to the *Act*, I am satisfied that the Landlord did not complete these reports in accordance with the *Act*. As such, I find that the Landlord has extinguished the right to claim against the deposit.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit, 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 deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, I am satisfied that the tenancy ended on January 25, 2021 when the move-out inspection was completed, and that the Landlord received the forwarding address on that date. As the Landlord made this Application on March 31, 2021, I find that the Landlord's Application was made late and outside of the 15 days that the Landlord was required to act. Therefore, the doubling provisions would ordinarily apply to the security deposit in this instance. However, as the Tenants permitted the Landlord, in writing, to retain the security deposit on January 25, 2021, there is now no security deposit that the Landlord would be required to claim against.

Regarding the Landlord's claims for damages, Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply. As the Landlord did not make an appearance for her own Application, I dismiss her Application without leave to reapply.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Landlord's 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: December 20, 2021

Residential Tenancy Branch