Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on May 21, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- The return of their security deposit, or double its amount;
- Compensation for monetary loss or other money owed; and
- Recovery of a previous $100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and their two family members, B.A. and A.A., all of whom provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenants and their family members were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the Respondent must be served with a copy of the Application, the Notice of Hearing, and all documentary evidence intended to be relied upon by the Applicant(s) at the

hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenants testified that the Notice of Dispute Resolution Proceeding Package, which contains the Application and the Notice of Hearing, and the documentary evidence before me from the Tenants, was sent to the Landlord by registered mail on June 9, 2021. The Tenants provided me with the registered mail tracking number and the Canada Post website confirms that the registered mail was sent as described above but ultimately returned to sender as undelivered/unclaimed. The Tenants and their family members stated that the Landlord has routinely avoided service in person, by mail, and by email but that this is the Landlord's address, as they personally served the Landlord with their notice to end tenancy at this address, and the Landlord used this address in their own evidence for a different hearing that took place on January 19, 2021. They provided me with the file number for the January 19, 2021, hearing, which I have recorded on the cover page of this decision. As a result, I was able to verify that the Landlord had recorded this address as their address of residence in their own documentary evidence for that hearing.

I also allowed the Tenants to provide me with a series of videos during the hearing, as I deemed them to be necessary, appropriate, and relevant to the dispute resolution proceeding, pursuant to section 75 of the *Act* and rule 3.17 of the Rules of Procedure. In one of the videos the Tenants' agent/family member B.A. can be seen packing the addressed registered mail envelope with the documentary evidence submitted to the Branch and the Notice of Dispute Resolution Proceeding Package. In a series of other videos one of the Tenants and one of their family members can be seen attending the address used for service of the Notice of Dispute Resolution Proceeding Package and evidence, to deliver the notice to end tenancy on March 6, 2021. In the videos both the building address and the unit number can clearly be seen, and the Landlord can be seen meeting them outside in a vehicle. The Landlord can also be seen attempting to refuse personal service.

Based on the above, I am satisfied that the address used by the Tenants for service of the Notice of Dispute Resolution Proceeding Package and evidence complies with sections 88(c) and 89(1)(c) of the *Act*. I am also satisfied that the Landlord is, more likely than not on a balance of probabilities, attempting to avoid service. As a result, I therefore deem the above noted documents received by the Landlord on June 14, 2021, five days after they were sent by registered mail, pursuant to section 90(a) of the *Act* and Residential Tenancy Policy Guideline (Policy Guideline) #12.

Records at the Residential Tenancy Branch (the Branch) indicate that the Notice of Dispute Resolution Proceeding Package was provided to the Tenants on June 7, 2021, for service by June 10, 2021. As the Tenants sent the registered mail on June 9, 2021, I find that they therefore complied with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure.

Based on the above, the hering therefore proceeded as scheduled, despite the absence of the Landlord, pursuant to rule 7.3 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenants, copies of the decision and any orders issued in their favor will be emailed to them.

Preliminary Matters

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. At the hearing the Tenants sought to amend the Application to include recovery of the $100.00 filing fee. As recovery of the filing fee is at my discretion, and I find it reasonable to conclude that the Landlord could reasonably have anticipated that the Tenants might wish to recover this amount, as their Application included a request for recovery of a previous filing fee, I therefore amended the Application to include recover of the filing fee paid for this Application.

Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit, or double its amount?

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to recovery of a previous $100.00 filing fee and the $100.00 filing fee for this Application?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on October 6, 2016, and ended on October 5, 2017, after which time the Tenants stated that the tenancy continued on a month to month basis. The tenancy agreement states that rent in the amount of $1,995.00 is due on the first day of each month and that a security deposit in the amount of $997.50 was required. The Tenants stated that rent at the time the tenancy ended was $2,046.87. The Tenants also confirmed that the security deposit was paid to the Landlord, that it had not been returned, and that there was no agreement for the Landlord to have retained it. They also stated that to their knowledge, there was no outstanding monetary order against them at the time the tenancy ended or any order from the Branch in relation to retention of the security deposit by the Landlord.

The Tenants stated that they had vacated the rental unit on April 5, 2021, and that on March 6, 2021, a notice to end the tenancy effective April 6, 2021, was personally served on the Landlord by one of the Tenants and B.A., who attended the hearing as a witness. The Tenants stated that their forwarding address was also provided to the Landlord in writing, via the notice to end tenancy on March 6, 2021, and via email on April 27, 2021. Although the Tenants agreed that a move-in inspection and report were completed at the start of the tenancy in compliance with the *Act* and the regulation, they stated that after receiving their notice to end tenancy, the Landlord made no attempts to schedule a move-out condition inspection with them, and therefore one was not completed. The Tenants stated that to their knowledge, the Landlord did not complete one without them as they never received a move-out inspection report. The Tenants therefore sought the return of double the amount of their security deposit, if applicable.

The Tenants stated that in a decision from the Branch dated September 29, 2020, the Landlord was ordered to complete emergency repairs and hire a plumber to repair plumbing in the bathroom by 5:00 P.M. on October 9, 2020, which they did not complete on time. The file number for this decision was provided by the Tenants and has been recorded on the cover page of this decision for reference. The Tenants stated that although the repairs were eventually completed by the Landlord, they were completed late, and in two parts on November 20, 2020, and January 6, 2021, and that as a result of the leak and the Landlord’s negligence in completing the repairs in a timely manner, despite a Brach order for them to do so, they suffered significant financial loss, stress, and mental anguish.

The Tenants stated that the leak that gave rise to that decision and order first occurred on July 13, 2020, and that they moved into a hotel on July 17, 2020, as a result of the leak, where they stayed for 36 days. The Tenants stated that the leak was so significant that it affected the unit below and rendered their bathroom sink, toilet, and the only shower in the rental unit unusable as it had not yet been determined where the leak was originating from. The Tenants stated that all of the bathroom walls were damp, and that clothing stored in a closet with an adjoining wall were also damp.

The Tenants stated that when they became aware of the leak, it was reported to the Landlord and the building manager, who shut off their water. The Tenants stated that it was also reported to their own insurance company, and that insurance agents attended the rental unit, set up large industrial dehumidifiers, and recommended that they vacate the rental unit. The Tenant stated that they therefore went to a hotel as there was no longer a working shower in the rental unit, because one of the Tenants has a health condition, and due to the extreme noise from the dehumidifiers.

The Tenants stated that the insurance company paid them $9,150.00 in compensation, but that they still suffered a loss, as their hotel was $8,157.29, their food costs were $2,730.97, and their insurance deductible was $500.00. As a result, the Tenants stated that they suffered a loss of $2,238.26 for food and hotel costs and their insurance deductible, all of which were incurred as a result of the leak in the rental unit, which the Tenants stated they did not cause or contribute to. They also sought the return of one months rent, at a cost of $2,046.87.

The Tenants stated that after it was determined that the bathroom sink was the cause of the leak, they returned to the rental unit and were able to use the toilet and shower in the bathroom. However, they stated that the sink leak was not fixed, and they ultimately had to seek an order from the Branch for its repair. The Tenants stated that the vanity was also soggy and for a period of 127 days, it could not be used. The Tenants stated that a new vanity was finally purchased and delivered on August 20, 2021, but was not installed until November 20, 2021. They sought $1,905.00 in compensation for loss of its use and the inconvenience suffered as a result.

The Tenants stated that the leak, their subsequent move to the hotel, and the Landlord’s repeated failure to deal appropriately and expediently with the leak, despite a Branch order to do so, resulted in significant loss of use and loss of quiet enjoyment. The Tenants stated that the Landlord also repeatedly attempted to enter the rental unit without authorization or notice, and pointed me to a video in support of this claim. Finally, the Tenants stated that the Landlord had committed a series of micro-

aggressions towards them with regards to their race. As a result, the Tenants sought $1,000.00 for loss of use and loss of quiet enjoyment.

The Tenants stated that a subsequent leak occurred in the kitchen sink, which they repaired at a cost of $420.00, and sought recovery of this amount. However, they acknowledged that they had the sink repaired prior to notifying the Landlord of the leak, and without the Landlords knowledge or consent, as they stated the Landlord had been unresponsive to the previous leak.

Finally, the Tenants sought the recovery of the $100.00 filing fee for this Application as well as the $100.00 filing fee for a previous application. The Tenants submitted a significant amount of documentary evidence in support of their Application including but not limited to copies of emails and text messages, documentation relating to registered mail, photographs, invoices and service records, copies of written letters/correspondence sent to the Landlord by the Tenants, the Tenants' written notice to end tenancy, correspondence between the Tenants and the RCMP regarding the tenancy, copies of bank records and cheques showing rent payments, copies of emails between the Tenants and the insurance company, including correspondence regarding claim amounts and approvals/disbursements, and a copy of the tenancy agreement and addendum.

Although the teleconference remained open for the duration of the hearing, which was 113 minutes in length, no one called into the hearing on behalf of the Landlord to provide any evidence or testimony for consideration.

Analysis

Based on the undisputed documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies existed between the parties, that rent in the amount of $2,046.87 was being paid by the Tenants at the time the tenancy ended, and that a $997.50 security deposit was paid to the Landlord, which has yet to be returned to the Tenants.

I am satisfied that the tenancy ended on or before April 6, 2021, and that the Tenants forwarding address was personally served on the Landlord on March 6, 2021, along with their written notice to end tenancy. The Tenants stated that there was no agreement for the Landlord to keep any portion the security deposit, and that there were no outstanding Monetary Orders in favor of the Landlord or orders against it from the Branch. As there is no evidence before me to the contrary, I accept this as fact. As a

result, I find that the Landlord was not entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*.

I also accept the Tenants' affirmed and undisputed testimony that after receiving their notice to end tenancy, the Landlord made no attempts to schedule a move-out condition inspection with them, and therefore one was not completed. As a result, I find that the Landlord breached section 35 of the *Act*. As there is no evidence before me that the Tenants breached any obligations set out under section 23 of the *Act* at an earlier date, I am therefore satisfied that the Tenants did not extinguish their right to the return of their deposit under section 24(1) of the *Act*. As I am satisfied that the Landlord breached section 35 of the *Act* by failing to first provide the Tenants with the required number of opportunities for a condition inspection, I find that the Landlord therefore extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 36(2)(a) of the *Act.* As a result, and pursuant to Policy Guideline # 17, I find that the Tenants also have not extinguished their right to the return of the security deposit under section 36(1).

Based on the above, I find that the Landlord was therefore required to return the security deposit to the Tenants, or file a claim against it with the Branch, as set out in Section 38(1) of the *Act*. As there is no evidence before me that the Landlord filed a claim against the security deposit and I am satisfied that no portion of it was returned to the Tenants, I therefore find that the Tenants are entitled to $1,995.00, double the amount of the $997.50 security deposit paid by them and improperly retained by the Landlord, pursuant to section 38(6) of the *Act*.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Based on the undisputed documentary evidence and affirmed testimony before me, I am satisfied that the Landlord breached section 32(1) of the *Act* by failing to investigate and repair a leaky bathroom sink in a diligent and timely manner, despite being ordered to do so by the Branch. I am also satisfied that this leak, and the Landlord's subsequent failure to investigate and repair it in a diligent and timely manner, resulted in a breach to the Tenants' right to use and quiet enjoyment of the rental unit, pursuant to section 28 of the *Act*. Further to this, I am satisfied that these breached resulted in the following financial losses to the Tenants:

- One months rent in the amount of $2,046.87;
- Food and lodging costs in the amount of $1,738.36;
- An insurance deductible in the amount of $500.00;
- Loss of use of a bathroom vanity in the amount of $1,905.00; and
- Loss of quiet enjoyment of the rental unit in the amount of $1,000.00

Finally, I am satisfied that the Tenants acted reasonably to mitigate these losses by repeatedly attempting to have the Landlord resolve the leak and the damage caused by the leak, including seeking an order that the Landlord do so from the Branch, which I am satisfied the Landlord failed to comply with. As a result, I therefore find that the Tenants are entitled to the $7,190.23 sought pursuant to section 7 of the *Act*.

Although the Tenants also sought $420.00 spent by them for a sink leak repair, I am not satisfied that they complied with section 33 of the *Act*, as they did not advise the Landlord of the leak and provide them with an opportunity to complete or take over the repair. As a result, I dismiss this claim without leave to reapply.

As the Tenants were successful in the vast majority of their claims, I award them recovery of the $100.00 filing fee paid for this application pursuant to section 72(1) of the *Act*. However, I decline to grant them recovery of the filing fee paid for a previous Application. Pursuant to section 67 of the *Act*, I therefore grant the Tenants a Monetary Order in the amount of $9,285.23, and I order the Landlord to pay this amount to the Tenants.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render this decision and issue the Monetary Order, is affected by the fact that this decision and the associated Monetary Order were rendered more than 30 days after the close of the proceedings.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$9,285.23**. The Tenants are provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the *Act*.

Dated: January 5, 2022

Residential Tenancy Branch