Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The former Tenant (hereinafter referred to as the "Tenant") filed an Application for Dispute Resolution (the "Application") on July 14, 2021. They seek compensation for money owed, and the return of the security deposit. As well, they seek 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 January 27, 2022.

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.

The Tenant stated they delivered notice of this hearing to the Landlord via registered mail. They forwarded more material to the Landlord later via registered mail. The Landlord confirmed receipt of both these pieces.

Preliminary Matter – Landlord's monetary claim

The Landlord prepared and provided evidence in relation to their own claim with the Tenant as the Respondent. There is a hearing scheduled in later 2022 for that separate application, filed by the Landlord on January 7, 2022. This present matter is not a cross-application, and I informed the parties in the hearing that the Landlord's separate application receives no consideration herein. The issues in this hearing are listed below.

Preliminary Matter – Landlord's disclosure of evidence documents

In response to the Tenant's claim, the Landlord prepared written material as evidence. They provided this to the Tenant via registered mail. The Landlord provided a record showing the delivery on January 14, 2021, and the item available for the Tenant's pickup at the local post office on January 17.

The Tenant in the hearing stated they just returned to their local area and received the registered mail notice the day of the hearing.

Rule 3.15 of the *Residential Tenancy Branch Rules of* Procedure sets a seven-day time limit in advance of the hearing for the applicant to receive the respondent's evidence. I am satisfied the Landlord served their evidence to the Tenant as required by this rule, and in a manner complying with the *Act*. I notified the parties of this in the hearing, and the Landlord's evidence in response to the Tenant's Application receives my full consideration herein.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, 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*?

Background and Evidence

At the start of the hearing, the Tenant described how they moved in 14 years ago with a previous landlord. At that time, they paid a security deposit of $1,000. The Landlord here became the owner of the property in 2015 and had a new tenancy agreement in place. Since February 2018 the parties have signed six-month term tenancy agreements ongoing. This is to aid the Tenant in leaving the province should they choose to do so. The Tenant in the hearing described on these consecutive agreements that "sometimes the rent increased, sometimes it didn't."

The tenancy ended after the Landlord issued a One-Month Notice to End Tenancy for Cause (the "One-Month Notice") on April 30, 2021. The Tenant disputed this via dispute resolution, and on July 2, 2021, an arbitrator granted the Landlord an Order of Possession. The Tenant vacated the rental unit on July 20, 2021. The Tenant did not receive their security deposit at the end of the tenancy. As the Tenant described it: '[the Landlord] said [they were] not willing to give me anything."

The Tenant claims for compensation for monetary loss. This is past rent they overpaid because of a rental increase implemented by the Landlord in 2018. The total amount of this claim on their Application is $35,000. The Tenant claims this rent increase was implemented by the Landlord using "intimidation and threats." In their written statement provided for this hearing, they stated "The overpayment of rent was over $40,000.00 plus accrued interest and damage deposit was $1,000. I'm willing to settle for $35,000 . . ."

The Landlord and Tenant each provided a copy of the Notice of Rent Increase form, signed by the Landlord on October 24, 2017. This set the amount of rent increase from $2,000 to $3,000, with the increased amount starting on February 1, 2018. The Landlord provided a document entitled Rent Increase Mutual Agreement, showing the Landlord's signature on October 24, 2017, and the Tenant's signature on October 26, 2017. This sets out the same schedule for rent increase for February 1, 2018.

The Tenant submits they questioned this rent increase at the time, and the Landlord would reply "if you don't like it, you can move the f— out." The Landlord visited the rental unit and "began cursing and acting aggressively." With no place to go and no other rental units available, the Tenant signed their new agreement. The Tenant signed this agreement being "afraid for their life." The Tenant stated they talked to the Residential Tenancy Branch about the rent increase; however, they chose not to dispute this, being "in fear for their life."

In the hearing the Tenant set out that they observed treatment by the Landlord of another tenant that they referred to as a "boarder". As stated in the hearing and in their written statement of July 27, 2021, they observed the Landlord remove that boarder's belongings to the dump. This made the Tenant "afraid they would do an illegal move at my house because they stated 3 times they would take my possessions and throw residents out into the street."

The Landlord's response to the Tenant's claim is that the agreement for increased rent was mutual. This discussion began in October 2017, on the then-current rent amount in comparison to similar homes in the area. In the Landlord's statement they provided that "The amount was negotiated and voluntarily agreed to between Landlord and [the Tenant] was $3,000, which although is a significant increase, was still well below market value and [the Tenant] recognized this and was okay with it at the time." At the time the Tenant also stated their preference for shorter-term 6-month agreement which the Landlord agreed to. The Landlord stated: "There was no pressure or coercion involved in the negotiation and [the Tenant] voluntarily agreed to the rent increase."

The Landlord also submitted an image of a text message from the Tenant dated February 1, 2018, asking about signing a new tenancy agreement that reflected this new rent amount. In the Landlord's written statement, this is "evidence that [the Tenant] voluntarily initiated the conversation with the Landlord to sign the new lease." The Tenant "was in full agreement to sign the new lease.

The Landlord provided copies of subsequent agreements signed by the parties: term from Feb 2019 to July 2019, rent $3,075; Feb to July 2020, $3,155; Aug 2020 to January 2021, $3,155; and January to July 2021, $3,155.

The Landlord submits the Tenant's submissions are "completely fabricated stories and outright lies". The Tenant's fear that the Landlord would throw them out along with their belongings is based on what they observed the Landlord do to the boarder; however, what the Tenant thinks they observed would have to have occurred earlier in 2017, as opposed to later 2019 when that boarder moved out.

This individual, known informally as the "boarder", attended the hearing as a witness. They confirmed they moved out peacefully which contrasts with the Tenant's account. Further, this other tenant had a longer tenancy around 10 years, and "never had disagreements". They stated: "what [the Tenant] is claiming is false, there were no arguments and no disagreement."

The Landlord also presented images of text messages to show the Tenant was making payments, albeit occasionally after the rent due date. The Landlord submits these messages show their own flexibility and efforts at accommodating the Tenant's payment of rent when difficulties arose. The Tenant advised the Landlord of late payment on October 30, 2018, February 4, 2019, and October 1, 2019. On February 7, 2019, the Landlord inquired about a signed tenancy agreement from the Tenant. In August 2020, the Landlord advised the Tenant they could keep a pet, which was against every agreement the Tenant had signed that stated "no pets".

The Landlord provided a prior decision of the Residential Tenancy Branch from 2014. This sets out the concept of "estoppel" where a tenant, agreeing to rent increases "created a common assumption upon which the Landlord relied." The Tenant's claim for past rent amounts owing because of a rent increase was dismissed.

On the subject of the security deposit, the Tenant stated in the hearing they did not provide their address to the Landlord "because of a lot of intimidation." The Tenant in the hearing stated the Residential Tenancy Branch informed them that it is the Residential Tenancy Branch who takes care of the forwarding address.

The Landlord confirmed they did not receive the Tenant's forwarding address at the end of the tenancy. They reiterated there were no threats, intimidation, or pressure.

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 has not proven that a loss exists. Most importantly, they did not prove that the Landlord implemented a rent increase unilaterally using threats or intimidation.

The Tenant did not provide a calculation of the rent amounts they paid in relation to the total of their claim. I am not satisfied, minus an equation or tally of rent paid, that the amount of $35,000 is accurate. There is insufficient evidence to show that, and the burden of proof is on the Tenant here. Their statement "I'm willing to settle for $35,000. . ." has no basis in fact.

I also review the portions of the *Act* that govern rent increases, in order to determine whether the Landlord violated the *Act*. The individual piece is s. 43:

(1) A landlord may impose a rent increase only up to the amount
c) . . .agreed to by the tenant in writing.

The Landlord presented the document entitled Rent Increase Mutual Agreement, bearing the Tenant's signature from October 26, 2017. I am satisfied this shows the Tenant's agreement

in writing. The Tenant did not present sufficient evidence to show they signed this document under duress or coercion, or intimidation. I find they did so freely.

After this, the Tenant continued to sign subsequent tenancy agreements for short-term arrangements. This bolsters the Landlord's response that the Tenant agreed to pay the rent amount freely. The Tenant had the avenue of dispute resolution through the Residential Tenancy Branch available to them; however, they did not file an application to dispute the rent increase.

I find the Tenant is making the charge of threats or intimidation without sufficient evidence. The boarder who attended gave a different picture of their relations with the Landlord. If this was part of the Tenant's belief on the way the Landlord operates, that is without foundation. By contrast, the Landlord provided evidence in the form of chat dialogues, and most importantly, the Tenant's signature on subsequent agreements showing the increased rent amount. There is no evidence of language that is threatening or intimidating, or even coercive. Likewise, there is no evidence of incidents where the Tenant was directly threatened by the Landlord. I am satisfied the parties agreed on the amount going forward from February 2018 onward.

The Tenant has not overcome the burden of proof. I dismiss this claim for monetary compensation in its entirety.

The Tenant also claimed for the return of the security deposit. There is no record of the Tenant providing their forwarding address to the Landlord in writing. The Landlord and the Tenant both confirmed in the hearing that this did not happen. The Tenant's address on the Application for this hearing does not count for the purpose of the return of the security deposit. Nor does their email address.

Under s. 38(1) of the *Act*, a landlord is required to either repay a tenant's security deposit or file an application for dispute resolution for a claim against the deposit. This must occur within **15 days of the later of receiving that tenant's forwarding address in writing, or at the end of a tenancy**.

In this case, the Tenant confirmed they did not provide a **written forwarding address** to the Landlord.

Pursuant to s. 38(1)(b), because the Tenant has not provided their forwarding address in writing, the Landlord's obligation to return the deposit has not yet been triggered. The Tenant

is not entitled to the return of the security deposit until they provide the written forwarding address to the Landlord.

I caution the Tenant that s. 39 of the *Act* provides that a landlord may keep any deposit if a tenant does not provide an address within one year after the end of the tenancy. Their right to the return of the security deposit is extinguished after one year.

Because there is no record of the Tenant providing their address to the Landlord as the *Act* requires, there is no return of the security deposit by the Landlord here. For these reasons, this portion of the Tenant's claim is dismissed without leave to reapply.

Because the Tenant is unsuccessful in each part of their claim, I dismiss their claim for the Application filing fee.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 28, 2022

Residential Tenancy Branch