Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: MNDCT FFT

Introduction

The tenant seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the application filing fee under section 72.

Both the tenant and a representative for the landlord (hereafter the "landlord") attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the tenant entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the above-noted issue of this dispute, and to explain the decision, is reproduced below.

The tenancy start date was July 1, 2018. The tenant took exclusive possession of the rental unit on July 17, 2018. On July 31, 2019 the tenancy came to an end. Monthly rent was $1,450.00 (due on the first day of the month) and the tenant paid a security deposit of $725.00. The security deposit was returned after the tenancy and is not in dispute. A copy of the written tenancy agreement was provided into evidence. It is noted that the tenancy agreement indicated a tenancy start date of July 1, 2018.

In this application, the tenant seeks $1,532.49 in compensation comprising the following (excerpted from the tenant's written submission and reproduced as written):

1. $795.16 in rent to be returned ($1450 rent for July/31 days = $46.77 per day X 17 days)

   Since the apartment was not able to be locked or moved into until near the end of the business day on July 17th, 2018, I am asking for my rent to be returned for the first 17 days of July.

2. $437.33 forced moving expenses

   I am also asking that CAPREIT pay for the movers that I had to use, since it is their fault that I was not able to use the free help I had arranged for myself during the first 15 days of July. The movers were used strictly for furniture since my vehicle could not accommodate transporting my bed, dresser, couch, desk and dining table. I used the most affordable movers that I could find.

3. $200 stress, anxiety and costs of making claims

   I have experienced severe stress and anxiety about this case from July 2018 to July 2021, including physical symptoms such as panic attacks, nausea, digestive issues, and extreme hair loss due to stress. I have incurred financial stress from this situation, due to my moving plans and schedule being affected, my income for July being affected, and having to pay for filing fees, printing fees and mailing fees for the two times I have made claims for this case. I am asking for $200 in compensation for the stress, anxiety, and monetary burdens experienced.

It should be noted that the tenant's application included a separate claim to recover the cost of the $100.00 application filing fee. This was, as the tenant clarified during the hearing, separate and apart from the $200.00 claim. A copy of the invoice from the moving company was provided into evidence.

It is also worth noting that the tenancy ended on July 31, 2019 and the tenant filed their application for dispute resolution on July 15, 2021, two weeks from the two-year limitation period under section 60(1) of the Act. I asked the tenant about her rather lengthy delay in filing this application, the tenant explained that she filed an application much earlier but that it was dismissed due to an error she had made in seeking the landlord's compliance with the Act. She experienced anxiety and was not in the right frame of mind to apply earlier.

The tenant testified that she anticipated being able to take possession of the rental unit on July 1, 2018. There was, however, asbestos abatement taking place and so she knew that the bathroom would be out of service for a few weeks.

When she picked up the keys from the landlord on July 1, she was advised that because contractors needed access to the rental unit to take care of the asbestos, she would have to keep the rental unit unlocked and free of her property and belongings. The tenant expressed an intention to return the keys, but the landlord advised her to keep them. Despite the rental unit being unlockable due to the landlord's instructions, and despite the tenant being told not to move any of her belongings into the rental unit, the tenant paid rent for the entire month of July 2018. The landlord accepted the rent.

It was not until July 17, 2018 that the tenant was eventually able to move into the rental unit and lock the apartment. She was forced to hire a moving company to move all of her larger furniture (things that would not fit into her car, she noted).

Originally, she had three people lined up to help her during the first two weeks of July: her brother, a friend, and her boss. However, when the move-in date was delayed until the 17th those individuals were no longer available, as were the truck or trucks that had been made available to the tenant. In addition, the tenant stated that she lost income because of having to book off work unexpectedly to take care of the move.

During her testimony the tenant referred to a Condition Inspection Report, a copy of which was submitted into evidence, in which the possession date is indicated by the landlord to be July 17, 2018. The move-in inspection date is indicated as July 26, 2018.

Nine photographs, dated from July 4, 2018 until July 17, 2018, inclusive, depict various interior perspectives of the rental unit. There is evidence that contractors were in the rental unit taking care of business. A photograph taken July 10 clearly shows that the backsplash behind the bathtub is non-existent: the 2x4s are still exposed. Another photograph dated July 16 depicts a refrigerator plugged in but situated at least a foot away from the wall.

The landlord testified that while much of what the tenant said is correct, he stressed that the gist of this case is that there was a miscommunication between the parties about the "actual 'need' for the apartment." When the parties executed the tenancy agreement sometime in the middle of June there was, he explained, no urgency for the tenant to move in on the first of July. Rather, the rental unit would be ready when the vendors were finished their work.

Both parties referred to a “Letter of Understanding” which was authored by the landlord and signed by the tenant on June 7, 2018. The Letter of Understanding (“LOU”), a copy of which was in evidence, essentially stated that the landlord needed to perform some work on the rental unit and that the tenant would understand that such work needed to be done. Relevant excerpts from the LOU are as follows:

“Most renovations/repairs will be completed within the first fourteen (14) business days of the month.” It also speaks to the tenant’s agreeing to access to the rental unit and that such access shall not be unreasonably withheld. Further, the LOU states that “All noted renovations/repairs may be completed while the new Tenant(s) occupy the suite.” (Except, as it were if the floors were being refinished, which was not the case here.)

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for Return of Rent

Under the terms of the tenancy agreement, in exchange for the payment of rent, the tenant was entitled to have not only the right to possession of the rental unit, but *exclusive possession* of the rental unit subject only to the landlord’s right to enter the rental unit pursuant to section 29 of the Act. (See section 1, definition of “rent” and “tenancy,” and see section 28(c) of the Act regarding exclusive possession.”)

Despite the tenant paying a full month’s rent in the amount of $1,450.00, the landlord instructed her that she was (1) not permitted to lock the rental unit, and (2) not permitted to bring any of her property or belongings into the rental unit. Indeed, according to the landlord’s own Condition Inspection Report, the *actual* possession date did not occur until July 17, 2018.

It is my finding that the landlord did not allow the tenant an opportunity to exercise her legal right to exclusive possession of the rental unit. The landlord readily and disingenuously accepted a full month's rent from the tenant whilst simultaneously requiring her to not lock the rental unit and barring her from bringing in her personal property. Moreover, the landlord's argument that the tenant's "actual need" for the rental unit or the "urgency" of such a need in somehow delaying the tenant's right to exclusive possession of the rental unit is wholly unpersuasive. If the landlord needed exclusive access to the rental unit for three weeks (give or take a day), and if the tenant was asked not to lock the rental unit and not to bring any of her belongings into the rental unit, then the landlord was essentially preventing the tenant from moving in and occupying the rental unit. As such, it begs the question as to why the landlord would expect to receive rent for a rental unit that was simply not ready for occupancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord breached their obligation under the Act, and the tenancy agreement, to provide to the tenant exclusive possession of the rental unit for which she paid full rent. The landlord was not entitled to full rent for the period of July 1 to July 17, 2018, nor was the tenant under any obligation to pay for rent for this period.

Given the above, the tenant is entitled to compensation in the amount of $795.16

2. Claim for Moving Expenses

In respect of this claim, had the landlord not breached their obligation to provide exclusive possession of the rental unit on July 1, the tenant would not have suffered a monetary loss of $437.33 required to hire movers. The tenant gave evidence under oath, and which was not disputed by the landlord, that they had three people who would have helped her move for free had the tenant been able to take exclusive possession on July 1, 2018. However, the tenant's brother no longer had a truck by the time the tenant moved in, and the other two people (one of whom had a truck) were on vacation by mid-July. It should be noted that the landlord's agent did not dispute this aspect of the tenant's claim, or otherwise make any reference to it during the hearing.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for compensation for what amounted to "forced" moving expenses in the amount of $437.33.

3. Claim for Stress, Anxiety and Costs of Making Claims

Regarding this aspect of the tenant's claim, a tenant is, during a tenancy, entitled to quiet enjoyment (see section 28 of the Act). Quiet enjoyment includes the right to be free of stress and anxiety caused by the negligence of a landlord in meeting their obligations under a tenancy. In this case, while I am not prepared to consider stress and anxiety that may have continued past the end of the tenancy, I am persuaded on a balance of probabilities that the tenant experienced stress and anxiety – thereby losing at least some of her right to quiet enjoyment during the first three weeks of the tenancy.

The tenant is awarded $200.00. (To be clear, this award is for the tenant's loss of quiet enjoyment which manifested in anxiety and stress; this award is not related to any previous application filing fee.)

4. Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in her application, I grant her $100.00 in compensation to cover the cost of the filing fee.

Summary

In total, the tenant is awarded $1,532.49. Pursuant to section 67 of the Act the landlord is ordered to pay the tenant within fifteen days of receiving a copy of this decision. A copy of a monetary order is issued to the tenant, in conjunction with this decision.

Conclusion

The tenant's application is hereby granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 2, 2022

Residential Tenancy Branch