Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 7, 2022 by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit or pet damage deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony and represented the other named tenant. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlords joined the call.

The tenant testified that each of the landlords was served with the Notice of Dispute Resolution package, including all evidence of the tenants, by registered mail on October 21, 2021. The tenants have provided 2 envelopes addressed to each of the landlords at the address of the rental unit, which contain registered mail stickers and date-stamped by Canada Post. The tenant testified that both were returned to the tenants unclaimed by the landlords.

The tenant also testified that the landlords get their mail at the rental address. The tenants also received an email from the landlords on October 30, 2021 indicating that they are not indebted to the tenants.

The *Residential Tenancy Act* specifies that parties served by registered mail are deemed to have been served 5 days after mailing. In this case, I find that the landlords are deemed to have been served on October 26, 2021, and that both landlords have been served in accordance with the *Residential Tenancy Act.*

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit and pet damage deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of use of a portion of the rental property and loss of quiet enjoyment?

Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2018 and reverted to a month-to-month tenancy after October 31, 2020, which ultimately ended on September 30, 2021. Rent in the amount of $2,000.00 was payable on the 1st day of each month and there are no rental arrears. On November 1, 2018 the landlords collected a security deposit from the tenants in the amount of $1,000.00 as well as a pet damage deposit in the amount of $500.00. The rental unit is a house on a 5 acre parcel of land, half of which was the rented portion. A tenancy agreement was prepared and signed by the tenant, but the tenants did not receive a copy.

The tenant further testified that on August 12, 2021 the tenants gave notice to end the tenancy by email effective on September 30, 2021 and a copy has been provided for this hearing. The tenant also sent a copy by regular mail to the landlords, and the landlords responded by email confirming receipt. The email contains the tenants' forwarding address.

The landlords did not return the entire deposits, but on November 4, 2021 returned a total of $750.00 to the tenants. The landlords have not served the tenants with an Application for Dispute Resolution claiming any part of the security deposit or pet damage deposit, and the tenants did not agree that the landlords keep any portion of the deposits.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling $7,060.00:

- $60.00 for U-Haul;
- $1,500.00 for damage deposit;

- $1,500.00 for double deposit;
- $2,000.00 loss of use of property; and
- $2,000.00 breach of quiet enjoyment.

The tenant testified that the tenants' belongings were removed from the rental home by a rental van, however a U-Haul trailer was also rented for removal of some water barrels, big pots and lumber which were at the back of the property. However, the landlords had blocked the property and driveway with drilling equipment preventing the tenants to get at the belongings at the back of the property. On September 24, 2021 the tenant emailed the landlords stating that it was not acceptable, and one of the landlords replied the following day saying that they were unaware and that the equipment was supposed to be placed at the end of the driveway. The tenants rented a U-Haul that they were not able to use, and the parties agreed that the items could stay on the property.

The tenants paid rent for the month of September, 2021 and the landlords had people there without consent of the tenants and without written notice. Further, there were no concerns until the last year of the tenancy when one of the landlords would enter the property without notice to work on things on the property. That became a problem when the tenant would return home from work, and while in the shower the landlord would show up.

One of the landlords also put a trailer on the property and said he was going to live there, and that he was going to let a friend stay at the end of the driveway, using water that the tenants paid for. However, the landlords did not move in until after the tenants had moved out, and the landlord's friend is now renting the rental home.

The landlord also trained the tenants' pit bull to jump up to the landlord's face. Another concern was that the landlord would interfere with the tenant's ability to parent the tenants' child. At bed time, the landlord would argue with the tenant that the landlord was playing with the child and the child didn't have to go to bed, which occurred 3 or 4 times per week.

Another incident causing concern was the landlord dumping the tenants' child's head in a bucket of water, scaring the child, which was very upsetting to the tenant. That was another day when the landlord showed up without notice.

Analysis

Firstly, a landlord may not arbitrarily decide to keep any portion of a security deposit or pet damage deposit. The *Act* states that a landlord must return the deposit(s) in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s).

In this case, I am satisfied that the landlords received the tenants' forwarding address in writing by email on August 12, 2021 and replied to it the same day indicating that it had been received, and the tenancy ended on September 30, 2021. The landlords had an obligation to either return the deposits or make an application to keep them by no later than October 15, 2021. The landlords did not return any portion of the deposits until November 4, 2021, clearly beyond the 15 day period, and I am satisfied that the tenants are entitled to double the amounts, being $3,000.00. The landlords returned $750.00, and I find that the tenants are entitled to the balance of $2,250.00.

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

The record shows that the monetary claim of $2,122.35 is for return of rent for September and the cost of the rented U-Haul.

I accept the undisputed testimony of the tenant that the landlord attended on the rental property without notice, which is contrary to the law. I also accept that the landlords had a drilling company on the property which prevented the tenants from retrieving some items that were left on the property. The tenant emailed the landlord about that on September 24, 2021 and claim one month's rent for September. I accept that the tenants are entitled to 6 days of rent, or $399.99, and $22.35 for renting the U-Haul. However, I am not satisfied that the tenants suffered any loss of quiet enjoyment beyond some temporary discomfort, or did anything to mitigate, such as telling the

landlord to not enter onto the property or to avoid contact with the tenant's child or dog. It is not sufficient to testify that the landlords have breached the tenancy agreement or the *Residential Tenancy Act.*

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the $100.00 filing fee.

Having found that the landlords owe $2,250.00 for double recovery of the security deposit and pet damage deposit, and $399.99 for a portion of September's rent, and $22.35 for the U-Haul, and recovery of the $100.00 filing fee, I grant a monetary order in favour of the tenants as against the landlords in the amount of $2,772.34.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,772.34.

This order is final and binding and may be enforced.

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: June 14, 2022

Residential Tenancy Branch