Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT, MNDCT**

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant JP (the "tenant") primarily spoke for all named applicants. The landlord LL (the "landlord") confirmed they represented both named respondents.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on September 1, 2020 and ended on February 28, 2022. The monthly rent was $3,550.00 payable on the first of each month. A security deposit of $1,775.00 and pet damage deposit of $1,775.00 were collected at the start of the tenancy. The landlord has returned the amount of $2,116.00 from the deposits to the tenants and retains $1,434.00. The parties prepared a condition inspection report at the start and end of the tenancy.

The move-out inspection report is dated February 28, 2022, provides the forwarding address of the tenant and is signed by the tenant agreeing to a deduction of $934.00 from the security deposit and $500.00 from the pet damage deposit.

The tenant says that after signing the move-out inspection report and agreeing to the deduction of $934.00 and $500.00 they subsequently felt the amount of the deduction was too high and requested that a greater amount be returned to them from the deposits. The tenant submits that after making the request the landlord altered the inspection report to report additional damage to the suite.

The parties agree that at the start of the tenancy the tenant reported the air conditioning unit as malfunctioning. The parties say that the landlord arranged for third-party technicians to attend at the rental unit and perform repairs. The tenant says that despite the landlord's efforts the air conditioning unit was not functioning properly for approximately 7 months. The tenant seeks a retroactive rent reduction of $200.00 for each month they say the air conditioning unit was not functioning.

The landlord submits that they contacted a third-party company to attend, inspect and repair the air conditioning unit in a timely manner. The landlord attributes the delay in completing repairs to the ongoing Covid19 pandemic, the interruption in the supply chain for necessary parts and the tenants' failure to provide follow up information in a timely manner.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case the parties agree that the tenants provided their written authorization that the landlord may retain $934.00 of the security deposit and $500.00 of the pet damage deposit. As such, I find the landlord could retain those amounts of the deposits for this tenancy. The undisputed evidence before me is that the landlord retained those amounts and returned the balance to the tenants.

I find that the submissions of both parties and the documentary evidence submitted to be little relevance to the matter at hand. I find that the parties came to an agreement on February 28, 2022 setting out the amounts that would be deducted from the deposits. The tenants gave no evidence that the original agreement was a result of coercion, duress or any factor that would negate their ability to enter an agreement. The tenant's own testimony is that after entering the agreement and providing written authorization, they subsequently changed their mind when they believed they could have negotiated a better outcome and decided they wanted to rescind their authorization.

I find no legal principle that would allow for a tenant to give written authorization and subsequently rescind that authorization when they change their mind. I find that the parties entered into a valid and effective agreement on February 28, 2022 allowing the landlord to retain $934.00 of the security deposit and $500.00 of the pet damage deposit. The landlord withheld those amounts as they were authorized and I find no

basis for the tenants to now claim these amounts. This portion of the tenants' application is accordingly dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This section read in conjunction with section 65 allows me the authority to issue a retroactive reduction in rent reflecting a loss in the value of a tenancy.

I accept the undisputed evidence of the parties that the air conditioning unit was not functioning properly at the start of the tenancy in September 2020. I accept the evidence that the landlord took steps to perform repairs and the unit was operating normally approximately 7 months later. I further accept the evidence of the parties that air conditioning was separate from the heating system which saw no issues.

Based on the totality of the evidence I find the tenants have not met their evidentiary burden to establish a breach on the part of the landlords that would give rise to a monetary award. I find the landlords responded to the tenants' requests in a timely, reasonable and professional manner, arranging for repairs and inspection of the issues cited. I accept the evidence that due to the ongoing Covid19 pandemic making safe arrangements for attendance in the rental unit was somewhat more difficult and time consuming than at other times.

I further find little evidence that the malfunctioning of the air conditioning unit had any effect on the value of the tenancy or resulted in any damage or loss to the tenants. I find that an air conditioning unit would have had little use during the winter months and based on the evidence submitted I find little effect on the tenancy. The tenants continued to reside in the rental unit throughout the tenancy and little evidence was given as to any material changes in their daily routine or conduct.

I find insufficient evidence on the part of the tenants to establish that there has been any breach by the landlord that has resulted in a loss or any effect to the value of the tenancy. Accordingly, I dismiss the tenants' application.

Conclusion

The tenants' application is dismissed in its entirety 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: August 8, 2022

Residential Tenancy Branch