Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord appeared with an agent, SS, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

Preliminary Issue: Landlord's Adjournment Request

Approximately 22 minutes into the hearing, the landlord inquired about whether an adjournment could be considered as their witness was not available. The landlord testified that their witness normally works during the day. The tenant was opposed to the adjournment as the hearing had already began, and they wanted to have their matter heard.

In deciding whether the landlord's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

I note that the landlord did not raise any issues until approximately 22 minutes into the hearing, after both parties confirmed that they were ready to proceed. I find that both parties had ample time to prepare for this hearing, including preparing any witness statements, written evidence, or organizing any witnesses the parties wanted to call.

I note that RTB Rule 5.3 allows a party to apply for a summons.

Section 5.3 and 7.19 of the RTB Rules of Procedure state the following:

5.3 Application for a summons
On the written request of a party or on an arbitrator's own initiative, the arbitrator may issue a summons requiring a person to attend a dispute resolution proceeding or produce evidence. A summons is only issued in cases where the evidence is necessary, appropriate and relevant. A summons will not be issued if a witness agrees to attend or agrees to provide the requested evidence

7.19 Witnesses' attendance at the dispute resolution hearing
Parties are responsible for having their witnesses available for the dispute resolution hearing.

A witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends.

In this case, the landlord did not apply for a summons, nor did they raise any issues prior to the commencement of the hearing. I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the landlord. I find that both parties confirmed that they were ready to proceed with the scheduled hearing, and then the landlord had decided they wanted to call a witness. As the tenant was opposed, and

as both parties had already provided most of their submissions, I find that an adjournment would cause an unnecessary delay, especially since both parties had ample time to prepare for this hearing, including ensuring that a witness is available. As noted in Rule 7.19, parties are responsible for having their witness available for the dispute resolution hearing.

The request for an adjournment was not granted as I find that the adjournment request was due to the landlord's failure to adequately prepare for the hearing, and the hearing had already commenced. The hearing continued.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began over five years ago, with monthly rent set at $1,200.00, payable on the first of the month. The tenant testified that the landlord had collected a security deposit of $600.00, and a pet damage deposit of $1,200.00 for this tenancy. The landlord testified that the deposits were $600.00 each, and both were returned to the tenant. Both parties confirmed that no written tenancy agreement exists for this tenancy.

The tenancy ended after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on January 23, 2021 for an effective date of April 1, 2021 in order for a close family member to move in. The tenant elected to give notice on March 1, 2022 to move out early on March 10, 2021. Both parties confirmed that the keys were returned on March 10, 2021.

The tenant filed this application because they discovered that the home was re-rented to new tenants. The landlord does not dispute that the home was re-rented, but not until September 1, 2021 as the landlord's son had gotten married and moved out.

The tenant also filed an application for the return of the pro-rated portion of the March 2021 rent. Both parties confirmed that the February 2021 rent was waived in satisfaction of the one month's rent payable to the tenant. The tenant testified that the pet damage deposit of $1,200.00 was applied towards the March 2021 rent, and therefore the tenant is owed a refund of the rent for the period of March 11, 2021 to March 31, 2021. The landlord testified that the tenant's security and pet damage deposit totalling $1,200.00 were both returned to the tenant, and the tenant never paid rent for the period of March 1 to March 10, 2021.

Analysis

Section 51(2) of the *Act* reads in part as follows:

> *51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*
>
> > *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> > *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I have considered the testimony and evidence of both parties, and I find that although the landlord's close family member did move in, the close family member moved out on August 31, 2021, and the rental unit was re-rented as of September 1, 2021, which is less than six months after the effective date stated on the 2 Month Notice. Although the tenant did elect to move out early, and the landlord's son may have moved in shortly after March 10, 2021, the *A*ct is specific in its requirement for the family member to occupy the home "for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice". In this case, the landlord's son failed to satisfy the 6 month requirement to occupy the rental unit for the full duration following the effective date, as required by the legislation.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the *Act.*

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I find that the explanation provided by the landlord for why the landlord's son moved out early does not qualify as an extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of $14,400.00.

The tenant also applied for reimbursement of the prorated rent paid for March 11 to March 31, 2021. Although the tenant agreed that no further rent was paid for March 2021, the tenant argued that they had paid a pet damage deposit in the amount of $1,200.00, which was applied towards the March 2021 rent. The landlord testified that only $600.00 was paid for the pet damage deposit, which was returned to the tenant. The landlord also argued that the tenant failed to pay their portion of the rent for March 1 to March 10, 2021, which was $387.10.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the Act.

Section 51(1.2) of the *Act* states the following: If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence before me, I find that the tenant failed to establish that the landlord had collected a pet damage deposit in the amount of $1,200.00 from the tenant. I am also not satisfied that the landlord still holds any portion of the tenant's rent that exceeds the amount payable for the period of March 1 to March 10, 2021. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant's application had merit, I allow the tenant to recover the filing fee paid for this application.

Conclusion

I issue a $14,500.00 Monetary Order in the tenant's favour for the landlord's failure to fulfil their obligations under section 51(2) of the *Act,* and for recovery of the filing fee.

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

I dismiss the remainder of the tenant's application 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: December 19, 2022

Residential Tenancy Branch