Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

The Tenant seeks the return and doubling of their security deposit, compensation, and recovery of the cost of their application filing fee, pursuant to sections 38(6)(b), 67, and 72(1), respectively, of the *Residential Tenancy Act* (the "Act").

Issue

Is the Tenant entitled to compensation?

Background and Evidence

In reaching this decision, I have carefully considered all of the parties' evidence and submissions. However, I will only refer to what is necessary to explain my decision.

It is noted that the parties disagreed over whether the Tenant properly served the Notice of Dispute Resolution Proceeding on the respondent Landlord. However, the Landlord attended to a ServiceBC office on July 14, 2022 and was then made aware of the hearing. Further, the Landlord acknowledged receiving the remainder of the Tenant's documentary evidence, and the Landlord had information regarding how they could upload evidence.

The Landlord testified that they served their evidence on the Tenant by registered mail. The Tenant states that they never received this evidence. That said, having reviewed the Landlord's evidence and submissions I find that they consist of copies of utility bills and duplicates of much of the Tenant's evidence. In other words, they either do not pertain to the issue being decided upon in this application, or, they are already in evidence.

The tenancy began on November 1, 2021 and ended a short time later on February 14, 2022. Monthly rent was $3,000.00 and the Tenants (only one Tenant made this application) paid a $1,500.00 security deposit. A copy of the written Residential Tenancy Agreement was in evidence.

The Tenant seeks the return and doubling of their $1,500.00 security deposit for a total amount of $3,000.00. The Tenant testified under oath that they provided their forwarding address, in writing, to the Landlord by registered mail on March 3, 2023. They further testified that they are not aware of any application made by the Landlord claiming against the security deposit. And they testified that at no time did they provide written consent to the Landlord for them to retain the security deposit.

The Landlord testified under oath that, because the Tenant moved out halfway through the month, they only paid half a month's rent. The security deposit equals half a month's rent and thus they considered that by retaining the security deposit the Landlord essentially compensated themself for the half month of rent.

The Tenant also seeks $6,000.00 in compensation for loss of quiet enjoyment during the tenancy, $500.00 in compensation for a moving container expense, and $300.00 in compensation for a moving trailer expense. The Tenant did not submit receipts or invoices for the latter two expenses and as such I am unable to consider these claims.

Regarding the loss of quiet enjoyment claim, the Tenant testified that they were subjected to frequent and repeated pejorative, threatening, and incredibly angry interactions and confrontations from tenants who resided in the lower part of the property. There were threats, and threats of violence, directed at both the Tenant and the Tenant's autistic son. The tenants came up to the Tenant's door several times regarding various issues. The Tenant noted that they called the RCMP at least twice during the tenancy.

The downstairs tenant (the male, almost exclusively) engaged in intimidation to a serious degree and the threats to the Tenant were "nonstop." To paraphrase the downstairs tenant, the Tenant was told "it's our f-ing property. We were here first." The confrontation and intimidation appeared to be driven by some sort territorial thing, the Tenant observed.

The Tenant asked the Landlord and the Landlord's son to address the issue with the downstairs tenants, but to no avail. Nothing was ever done by the Landlord or their son, explained the Tenant. Ultimately, the Tenant and their family moved into and out of the rental unit "as fast as humanly possible." The parties ended the tenancy by way of a mutual agreement to end tenancy, a copy of which is in evidence.

Also in evidence is a four-page letter dated January 19, 2022, from the Tenant to the Landlord, in which various tenancy issues—most notably the conduct of the downstairs tenant—are outlined. An excerpt from that letter describes the conduct (reproduced as written):

> [. . .] It has not been almost (4) four [sic] months straight of volatile & belligerent, threatening and toxic behaviour.
>
> From the male, lower tenant coming upstairs, bashing on our door to turn up heat to music shaking the house from the lower suite & the lower tenants boom box in his vehicle all hours. Also him shining his vehicle lights into our side windows of bathroom all hours. Him screaming at his toddler/child & wife/girlfriend belligerent attacks.
>
> He has threatened our 12 year old son who as A.S.D., not at all acceptable or quiet enjoyment for our quiet respectful family. [. . .]

The Landlord and their son testified that while the situation between the Tenant and the downstairs tenant was "an unfortunate experience," sometimes neighbouring tenants simply do not get along. The Landlord's son testified that both the Tenant and the downstairs tenant complained to him about each other. However, it was the Landlord's position that it was up to the two tenants to figure this problem out and to "just try to get along." The son also testified about other issues brought up during the hearing regarding an inoperable stove and a dishwasher.

The Landlord also testified that it was "too bad they didn't get along" but remarked that "I don't have any control over them." And, the Landlord explained and reiterated that there was nothing that they could do to resolve the dispute between the two tenants.

Analysis

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 and doubling of security deposit

Section 38(1) of the Act addresses a landlord's oblations relating to a tenant's security and pet damage deposits. This section states that

> Except as provided in subsection (3) or (4)(a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the Landlord received the Tenant's forwarding address in early March 2022. The Tenant did not agree in writing for the Landlord to keep the security deposit (as per section 38(4)(b) of the Act). The Landlord did not make any application for dispute resolution claiming against the security deposit. And the Landlord admitted that they kept the security deposit to cover a purported loss of rent.

Regarding the Tenant's claim for double the return, section 38(6) of the Act states that

If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, I have found that the Landlord did not comply with subsection 38(1) of the Act and as such must pay the Tenant double the amount of the security deposit in the amount of $3,000.00. The Tenant's claim for this is thus granted.

2. Claim for compensation for loss of quiet enjoyment

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

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including the freedom from unreasonable disturbance. The sworn oral and documentary evidence persuades me to find, on a balance of probabilities, that the Landlord breached this section of the Act by not taking reasonable steps (or any steps for that matter) in addressing the source of the Tenant's loss of quiet enjoyment. Namely, the downstairs tenant. The downstairs tenants' egregious behavior can, by any stretch of the definition, be aptly described as an unreasonable disturbance.

The downstairs tenant repeatedly engaged in brutal and inhuman behavior that would, in my opinion, cause any reasonable person to move out "as fast as humanly possible." The letter sent to the Landlord reiterates the downstairs tenant's ongoing vexatious, threatening, and disturbing behavior. The police were required to be called on at least a few occasions.

Yet, despite this conduct, the Landlord avoided taking any steps at any point during the tenancy. While it is certainly true that neighbouring tenants sometimes do not get along, the behaviour of the downstairs tenant was so egregious that any reasonable landlord would, at a bare minimum, issue a warning letter to the offending tenant. In this case, the Landlord took no action to put the downstairs tenant on notice.

It is thus my finding that, but for the breach of the Act, the Tenant would not have suffered a significant loss of quiet enjoyment during their tenancy. The amount sought, $6,000.00, is reasonable compensation in light of the extreme level and frequency of the breach of the Tenant's right to quiet enjoyment and their right to freedom from unreasonable disturbance. The Tenant took, I also find, reasonable steps to reduce their loss by repeatedly, almost daily, contacting the Landlord to deal with the downstairs tenant and his abusive conduct. The Tenant also sent a letter, again to no avail. And they took the ultimate, unfortunate, but also reasonable step of ending the tenancy early.

For these reasons, it is my finding that the Tenant has proven their claim on a balance of probabilities for compensation in the amount of $6,000.00 for loss of quiet enjoyment.

3. Claim for Application Filing Fee

Pursuant to section 72(1) of the Act, because the Tenant succeeded in this application, the Landlord is ordered to pay the Tenant for the cost of the $100.00 filing fee.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The application be granted, in part;

2. Pursuant to sections 38(6)(b), 67, and 72(1) of the Act the Landlord must pay $9,100.00 to the Tenant; and,

3. The Tenant is granted a monetary order for this amount, and the Tenant must serve a copy of the monetary order upon the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 7, 2023

Residential Tenancy Branch