Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, FFT, OLRD
MNRL-S, LRSD, OLRD, FFL

Introduction

The original hearing was convened by telephone conference call at 1:30 pm on April 14, 2023. That hearing was adjourned, and an interim decision was issued by me. As a result, that interim decision must be read in conjunction with this decision. As per the agreement of the parties, the tenant's application was crossed with that of the landlord, and it was agreed by the parties that the hearing of both applications would recommence at the date and time originally scheduled for the landlord's application, on September 18, 2023, at 1:30 pm.

The landlord failed to attend the hearing as scheduled. I am satisfied that the landlord was aware of the hearing from both their own Notice of Dispute Resolution Proceeding (NODRP), and the interim decision and notice of hearing emailed to them by the Residential Tenancy Branch on April 17, 2023. As a result, I am also satisfied that the landlord therefore had ample opportunity to appear.

I confirmed that the hearing details contained in the landlord's original NODRP, and the notice of hearing were identical and correct, and the tenant was able to attend the hearing as scheduled using this information. Pursuant to rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), the hearing therefore proceeded as scheduled despite the absence of the landlord or an agent acting on their behalf. The landlord's application was also dismissed in its entirety, without leave to reapply.

Service of Evidence

The tenant stated except for videos, that the documentary evidence before me, which was served in response to the landlord's application, was posted to the landlord's door at the end of December 2022. They stated that the videos before me were also texted to landlord at the end of December 2022, as they did not have the financial means to serve them another way.

The tenant stated that the landlord acknowledged receipt of the above evidence, and advised them to stop harassing them. As a result, and in the absence of any evidence to the contrary, I find the above noted documentary evidence sufficiently served on the landlord for the purposes of the Act and the Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to reimbursement for the cost of emergency repairs?

Is the tenant entitled to compensation for monetary loss or other money owed?

Is the tenant entitled to an ongoing rent reduction for repairs, services, or facilities agreed upon but not provided?

Is the tenant entitled to the return of their deposits, or double their amounts?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenant sought $600.00 under section 33 of the Act for repairing the following things:

- A blocked kitchen sink drain;
- A blocked shower drain;
- A blocked washing machine drain; and
- A broken patio door lock.

The tenant stated that the landlord's son was the named contact for emergencies and repairs, and that when the above noted issues arose, they immediately contacted them. They stated that the landlord's son denied that anything was wrong and made no

attempts to repair the issues. As a result, the tenant stated that they bought supplies and tools and fixed the issues themselves at a cost of $600.00.

The tenant stated that although they invoiced the landlord for the above noted costs and repairs, the landlord refused to reimburse them. As a result, they sought recovery of this amount.

The tenant stated that as the rental unit was not liveable, they only resided there for 8 nights. The tenant stated that they and the landlord agreed that due to the unliveable condition of the rental unit, the tenancy could be ended, without penalty to the tenant, and that the tenant was entitled to the return of their security and pet damage deposit ($825.00 each) plus $1,425.00 of the $1,650.00 in rent paid. The tenant therefore sought recovery of these amounts.

Finally, the tenant sought a rent reduction in relation to utility charges they stated were added to the tenancy agreement by the landlord after it was signed and without their consent. However, the tenant acknowledged that this is a moot point, as the tenancy ended and they never paid or were charged these amounts.

Analysis

Is the tenant entitled to reimbursement for the cost of emergency repairs?

I accept the tenant's testimony that they completed repairs to the following:

- A blocked kitchen sink drain;
- A blocked shower drain;
- A blocked washing machine drain; and
- A broken patio door lock.

I also find that these meet the definition of emergency repairs under section 33 of the Act. I accept the tenant's affirmed and undisputed testimony that they complied with the requirements set out under section 33 of the Act with regards to informing the landlord, completing the repairs, and invoicing the landlord. I am also satisfied that the landlord failed to reimburse the tenant as required. As a result, and in the absence of any evidence to the contrary, I find that the tenant has established a claim for reimbursement of the cost of emergency repairs in the amount of $600.00.

Is the tenant entitled to compensation for monetary loss or other money owed?

Based on the undisputed documentary evidence and affirmed testimony from the tenant, I accept that the tenancy ended by way of mutual agreement with the landlord because the landlord failed in their obligations under section 32(1) of the Act. I am also satisfied that the tenant suffered a loss in the amount of $1,425.00 for rent paid for the period after the end date for the tenancy, that the landlord agreed to pay this money to the tenant, and that the landlord failed to do so. I therefore award the tenant recovery of this amount under sections 7, 32(1), and 67 of the Act.

Is the tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?

Although the tenant sought a rent reduction in relation to utility charges they stated were added to the tenancy agreement by the landlord after it was signed and without their consent, they acknowledged that this is a moot point, as the tenancy ended and they never paid or were charged these amounts. As a result, I dismiss this claim without leave to reapply.

Is the tenant entitled to the return of their deposits, or double their amounts?

I am satisfied that the tenant paid an $825.00 security deposit and an $825.00 pet damage deposit, which have not yet been returned. The Act sets out how security and pet damage deposits are to be dealt with at the end of a tenancy. The landlord filed an application seeking retention of the tenant's deposits on December 21, 2022, and I am satisfied that the tenancy ended on December 11, 2022. The tenant's forwarding address is not contained on the move-out condition inspection report. However, a text message shows that it was sent to the landlord via text December 16, 2022, at 12:28 PM. The text message chain shows that the landlord responded that same day at 7:33 pm. As text is a written form of communication, I am satisfied that the tenant provided their forwarding address in writing to the landlord on December 16, 2022, and that it was received by the landlord that same day. I therefore find it sufficiently served on the landlord on December 16, 2022, under section 71(2)(b) and (c) of the Act.

Based on the above, and as no arguments were raised that either party had extinguished their rights to the deposit under the Act, I find that the landlord properly claimed against the deposits under section 38(1) of the Act. As a result, I find that section 38(6) of the Act does not apply. As there were no arguments at the hearings that sections 38(3) or 38(4) of the Act apply, I find that they do not. As a result, and as

the landlord's application seeking retention of the security and pet damage deposits was dismissed, I find that the tenant is entitled to the return of their $1,650.00 in deposits, plus $25.56 in interest owed, for a total of $1,675.56.

Is the tenant entitled to recovery of the filing fee?

As the tenant was successful in their application, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of **$3,800.56**. The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's claim for a rent reduction in the amount of $400.00 is dismissed without leave to reapply.

The tenant was permitted to withdraw the following claims:

- An order for the Landlord to complete repairs;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- Authorization to change the locks.

The landlord's application seeking the following is dismissed without leave to reapply:

- Retention of the security and pet damage deposits;
- Recovery of unpaid rent and utilities; and
- Recovery of the filing fee.

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

Dated: October 17, 2023

Residential Tenancy Branch