

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlords attended the hearing.

Tenant R.B. attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant M.S. was served on August 3, 2023, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant R.B. was served on August 3, 2023, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Tenant R.B. testified that the tenants received the above mailings.

Service of Amendment and Evidence

The Landlords testified that they served the Tenants with their evidence and Amendment via registered mail on January 5, 2023. The Landlords entered into evidence photographs of the registered mailings post marked January 6, 2023 and showing the tracking numbers for the mailings. The Landlords testified that the above packages were sent to the same mailing address as the Proceeding Package but tenant

R.B.'s package was returned to sender. The Landlords testified that the address used was the forwarding address provided by the Tenants at the end of the tenancy.

Tenant R.B. testified that their forwarding address changed between late September and early October of 2023 and that the Tenants did not advise the Landlords of this change. Tenant R.B. testified that the Tenants did not receive the Landlord's evidence or Amendment.

I find that the Landlords were entitled to rely upon the forwarding address provided by the Tenants and with which they successfully served the Tenants with the Proceeding Package. Given that the parties were engaged in active litigation, I find that it was the Tenants' responsibility to provide the Landlord's with their new address for service when their address for service changed. To find otherwise would amount to permission to avoid service. I therefore find that the Tenants were deemed served in accordance with section 90 of the Act with the Landlord's evidence and Amendment on January 9, 2024, five days after the packages were sent.

Preliminary Issue

Both parties agree that the Landlord's claim for a Monetary Order for damage to the rental unit or common areas was settled prior to this hearing. This claim pertained to damages caused by a water leak of a home appliance. The Landlords withdrew this claim at the start of the hearing.

As the above claim had been settled outside of this dispute resolution proceeding, I dismiss it without leave to reapply.

Both parties agree that the Landlords returned the Tenants' security deposit to them plus interest on September 15, 2023. The Landlord withdrew their claim for authorization to retain the security deposit. Tenant R.B. did not dispute the withdrawal of the above claim. The Landlord's claim for authorization to retain the security deposit is therefore dismissed without leave to reapply.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2021, with a monthly rent of \$2,853.00, due on first day of the month, with a security deposit in the amount of \$1,400.00.

The Landlords testified that they are seeking lost rental income for the month of August 2023 and utility charges for August of 2023.

The Landlords testified that they served the Tenants with a One Month Notice to End Tenancy for Cause (the One Month Notice) via registered mail on June 26, 2023. The Tenant confirmed receipt of same. Both parties agree that after receiving the One Month Notice the Tenants filed to dispute it. Tenant R.B. testified that while they initially disputed the One Month Notice they decided that the situation with the Landlord was too crazy and decided to move out in accordance with the effective date of the One Month Notice, that being July 31, 2023. Tenant R.B. testified that they filed to dispute the One Month Notice on June 25, 2023.

The Landlords testified that on June 26, 2023 the Tenants emailed them a notice to end tenancy effective July 31, 2023. Both parties agree that the Landlords initially advised the Tenants that they wanted to do some minor renovations to the subject rental property and to re-rent it for September 1, 2023. The Landlords testified that after advertising the rental property they realized there was a large demand for rental units for August 1, 2023 and they decided to try and rent the property for August 1, 2023 and were successful in finding a tenant for a tenancy starting August 1, 2023.

The Landlords testified that on July 4, 2023 they received the Tenant's Application for Dispute Resolution which stated a hearing date in October of 2023. The Landlords testified that since the Tenants disputed the One Notice and the hearing was not until October of 2023, they could not enter into a new tenancy agreement starting August 1, 2023 as they could not guarantee possession to the new tenant at that time.

The Landlords testified that they emailed the Tenants several times asking them to clarify their intention and to withdraw the Application for Dispute Resolution if they were moving out July 31, 2023 as stated in their notice to end tenancy. The Landlords testified that the Tenants emailed them that they were moving out July 31, 2023 but refused to withdraw their application to cancel the One Month Notice. The Landlord's testified that since they refused to withdraw their application to cancel the One Month Notice they could not enter into a new tenancy agreement until they regained possession of the rental property. The Landlord's testified that their potential new tenants needed to give their landlord's notice to end their tenancy and so they could not move in immediately after the Landlord's gained possession. The Landlords testified that they therefore could not rent the property out until September 1, 2023 and suffered a loss of rental income for August 2023 and had to put the utilities in their name for the interim which resulted in further loss.

The Landlords testified that the Tenant's caused this loss of income by refusing to withdraw their application to cancel the Notice even though they planned to move out by the effective date of the One Month Notice.

Tenant R.B. testified that they believed the Landlords did not intent to re-rent the property until September 1, 2023 as they wanted to do some renovations.

Tenant R.B. testified that they did not want to withdraw their application to cancel the One Month Notice because they thought the One Month Notice would be decided on in the October 2023 hearing and they did not want a mark on their name.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

There is nothing in the Act, Tenancy Agreement or Regulation which requires a tenant to withdraw an application to cancel a notice to end tenancy if they decide after filing to move out of the rental property before the set hearing date. I find that the Landlords have not proved, on a balance of probabilities that the Tenants breached the Act, regulation or tenancy agreement and so their claim fails.

For the above reasons, the Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlord's 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 Act.

Dated: January 31, 2024

Residential Tenancy Branch