Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On December 8, 2023, I issued a Decision and Monetary Order in favour of the Landlord. The Tenant successfully sought a Review Consideration of the December 8, 2023, Decision and Monetary Order, and a rehearing of the original Applications was set down before me on March 7, 2024.

Pursuant to Section 82(3) of the Act, I may confirm, vary, or set aside the original Decision and Monetary Order issued on December 8, 2023.

Service of Notices of Dispute Resolution Proceeding (Proceeding Packages)

As the Tenant acknowledged receipt of the Landlord's Proceeding Package and raised no concerns regarding service, I found the Landlord's Proceeding Package sufficiently served on the Tenant for the purpose of the Act. The re-hearing of the Landlord's Application therefore proceeded as scheduled.

The Tenant only submitted documentary evidence regarding service of a copy of their paper Application on the Landlord by registered mail on November 28, 2022. The Tenant's Proceeding Package, which included a copy of the Tenant's Application, and the hearing details, was emailed to the Tenant by the Residential Tenancy Branch (Branch) on November 30, 2022, for service on the Landlord. Although the Tenant's agent stated that they think this was also served on the Landlord, they could not state with any degree of certainty how or when this was done. No documentary or other corroboratory evidence was submitted regarding service of the Tenant's Proceeding Package on the Landlord. The Landlord denied receipt.

As a result of the above, I confirm the original decision made by me on December 8, 2023, to dismiss the Tenant's Application due to lack of service on the Landlord. The Tenant's claim for recovery of their filing fee was dismissed without leave to reapply. All other remaining claims made by the Tenant in their Application were dismissed with leave to reapply. The hearing therefore proceeded based only on the Landlord's Application.

Service of Evidence

The Tenant acknowledged receipt of the Landlord's documentary evidence and raised no concerns regarding service. I therefore found the Tenant sufficiently served with the documentary evidence before me from the Landlord for the purpose of the Act. The Landlord's documentary evidence was therefore accepted for consideration.

The Tenant and their agent stated that an affidavit was taped to the Landlord's door in July of 2023, and keys were put in the mailbox. The Landlord denied receipt, stating that other than the documentary evidence previously agreed as served by email, they only received the Tenant's forwarding address, which was a PO Box. No proof of service documents or evidence was submitted.

Due to the Landlord's testimony, and the lack of corroboratory evidence from the Tenant regarding service, I found that the Tenant had failed to satisfy me that their original documentary evidence was served on the Landlord as required. I therefore excluded the Tenant's documentary evidence from consideration, except for the documentary evidence the parties previously agreed had been properly served as part of the Review Consideration process.

Issue(s) to be Decided

Will my December 8, 2023, Decision and Monetary Order on the following matters be upheld, varied, or set aside under section 82(3) of the Act:

Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant, their pet(s), or their guest(s)?

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

Is the Landlord entitled to retention of the security deposit and pet damage deposit? If not, is the Tenant entitled to their return or double their amounts?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenant paid A $1,150.00 security deposit and a $600.00 pet damage deposit on approximately April 1, 2021, which the Landlord still holds. The Tenancy agreement states that $1,150.00 in rent was due on the first day of each month and neither party disputed this at the hearing.

The parties disagreed about:

- whether the Tenant left the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear and pre-existing damage;
- whether the Tenant returned the keys;
- whether the Landlord is entitled to compensation for an additional occupant under the tenancy agreement;
- when the tenancy ended; and
- whether the Landlord is entitled to compensation for loss of use of a patio.

The Landlord stated that the rental unit was covered in cat urine and feces at the end of the tenancy, and was damaged by the Tenant smoking in the rental unit contrary to their tenancy agreement. They also stated that the Tenant broke the thermostat. As a result, the Landlord stated that the rental unit had to be professionally cleaned, the thermostat and locks had to be replaced, and that the walls had to be sealed and re-painted. The Landlord sought recovery of the following costs:

- $500.00 in cleaning costs;
- $1,200.00 in painting costs;
- $20.00-$30.00 in lock replacement costs; and
- $48.00 for a new thermostat.

The Tenant denied damaging the rental unit, failing to leave it reasonably clean, and failing to return the keys. The Tenant and their agent stated that they were present when the keys were placed in the Landlords mailbox on November 25, 2022, and that the rental unit was cleaned for several days prior to the end of the tenancy. The Tenant also denied breaking the thermostat, however, they did acknowledge that the carpets were not shampooed at the end of the tenancy.

Although the Landlord was granted an Order of Possession by the Branch effective two days after service on the Tenant, the parties disagreed about when the tenancy ended. The Landlord stated that they served the Order of Possession on October 8, 2022, but are not sure when the Tenant vacated as the Tenant did not communicate with them or pay any rent for October. The Tenant denied this, stating that they gave the Landlord $575.00 in rent for October and advised them that they would be out by October 15, 2022.

The Landlord alleged that the Tenant's agent D.H., who is also the Tenant's partner, occupied the rental unit for approximately five months. As a result, they sought $500.00 in outstanding rent for the additional occupant in accordance with the addendum to the

tenancy agreement. The Tenant and D.H. denied that D.H. was an occupant of the rental unit.

Finally, the parties disagreed about whether the Tenant was permitted under their tenancy agreement to use a patio. The Landlord stated that they were not, as it was not rented to the Tenant under their tenancy agreement. As a result, the Landlord sought $900.00 in compensation for their unpermitted use of this area of the property, calculated at $50.00 per month over 18 months. The Tenant and their agent stated that there was a verbal agreement with the Landlord for the Tenant to store some belongings on the patio, and therefore the Landlord is not entitled to the compensation sought.

During the hearing the Tenant and their agent also called a witness. This witness, D.B., denied advising the Landlord to write the statement submitted by the Landlord for my consideration. The Landlord disagreed, stating that D.B. asked them to write it and is now lying.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party bearing the burden of proof must provide sufficient evidence over and above their testimony and submissions to establish their claim. In this case, the Landlord bears the burden of proof on a balance of probabilities in relation to their claims.

Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant, their pet(s), or their guest(s)?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying party must:

- compensate the other party for any damage or loss that results; and
- do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and return all keys.

The Landlord claimed that they incurred $1,721.69 in losses due to damage, cleaning costs, and the Tenant’s failure to return the key to the rental unit. For the following reasons, I am not satisfied by the Landlord that this is the case.

The Tenant and their agent D.H. provided affirmed testimony that the rental unit was clean and undamaged at the end of the tenancy and that the keys to the rental unit were returned. They also denied that the Tenant ever smoked in the rental unit. The only evidence submitted by the Landlord to corroborate these claims was a self-authored declaration they stated that they completed on D.B.'s behalf with D.B.'s knowledge and consent. However, D.B. appeared at the hearing and provided affirmed testimony subject to cross-examination that the information contained in the declaration is incorrect. They also stated that they did not request that the Landlord write it on their behalf or give them permission to do so.

I find D.B.'s testimony more persuasive and compelling in this regard. It was made under affirmation and was subject to cross-examination by the Landlord at the hearing. The Landlord also failed to submit any evidence to corroborate that D.B. had requested that they author the declaration on their behalf. As a result, I give no weight to the declaration.

Given the above, I find that the Landlord has submitted no evidence to substantiate their claims that the Tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, that they smoked in the rental unit, or that they failed to return the keys. Although I am satisfied that the Tenant failed to have the carpets cleaned at the end of their tenancy as required by Residential Tenancy Policy Guideline (Guideline) 1, the Landlord submitted nothing to substantiate that the carpets were subsequently cleaned, and if so, at what cost. As a result, I find that the Landlord failed to satisfy me that they have met each ground of the four-part test set out in Guideline 16 for granting claims for compensation.

As a result of the above, I dismiss the Landlord's claims for recovery of any costs associated with cleaning, damage, smoking, or the replacement of locks and keys without leave to reapply.

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

I am satisfied that term two of the addendum to the tenancy agreement permitted the Landlord to increase the Tenants rent by $100.00 per month for each additional occupant. However, the Landlord has failed to satisfy me that D.H. occupied the rental unit. The Landlord submitted no documentary or other evidence to corroborate this belief, and the Tenant and D.H. provided affirmed testimony that D.H. maintained a separate residence several blocks away. As a result, I find that the Landlord has failed to satisfy me that the Tenant had an additional occupant in the rental unit. I therefore dismiss the Landlord's claim for $500.00 in compensation for an additional occupant, without leave to reapply.

I also dismiss the Landlord's claim for $900.00 in compensation for loss due to the Tenant's use of a patio. While I am satisfied that the patio was not explicitly rented to the Tenant as part of the written tenancy agreement, the parties disagreed about

whether there was a verbal agreement in place for the Tenant to store some items there. Given the contradictory affirmed testimony of the parties, and the lack of corroboratory evidence from the Landlord, who bore the burden of proof, I therefore find that the Landlord has failed to satisfy me that they are entitled to the $900.00 sought. I therefore dismiss this portion of their claim without leave to reapply.

Is the Landlord entitled to retention of the security deposit and pet damage deposit? If not, is the Tenant entitled to their return or double their amounts?

There was no dispute between the parties that rent was $1,150.00 per month under the tenancy agreement. I therefore find this as fact. The parties also agreed that the Tenant paid a $1,150.00 security deposit and a $600.00 pet damage deposit, both of which are still held in trust by the Landlord.

However, section 19(1) of the Act states that a landlord must not charge or accept more than ½ of one month's rent as either a security deposit or a pet damage deposit. Based on the above, I am satisfied that the Landlord overcharged the Tenant by $600.00, as they were only entitled to request and accept a $575.00 security deposit and a $575.00 pet damage deposit, as the parties agreed that the Tenant had a cat.

Although the parties disagreed about when the tenancy ended, the Landlord acknowledged receipt of the Tenant's forwarding address in writing in October of 2022. Neither party disputed that this was after the end of the tenancy. A copy of the #RTB-41 wherein the Tenant provided their forwarding address was also submitted by the Landlord for my consideration, and states that it was posted to the Landlord's door on October 29, 2022.

I am therefore satisfied that the Tenant's forwarding address was posted to the Landlord's door on October 29, 2022, after the end of the tenancy. As the Landlord could not recall the exact date of receipt, I therefore deem it served three days later, on November 1, 2022, pursuant to section 90(c) of the Act. As the Landlord filed their Application with the Branch on November 3, 2022, they complied with section 38(1) of the Act. As the Landlord also sought compensation unrelated to physical damage to the rental unit in the Application, I make this finding regardless of whether they initially failed in their obligations under the Act and regulation regarding the completion and provision of the condition inspection report at the start of the tenancy, as alleged by the Tenant.

Based on the above, I find that section 38(6) of the Act does not apply, and that the Tenant is therefore not entitled to the return of double the amount of their deposits. As I have dismissed the Landlord's monetary claims, I do however award the Tenant $1,797.38 for the return of their deposits, including the $600.00 overpaid, plus $47.38 in interest accrued, as I am satisfied that the Landlord does not have a right to retain any portion of it. I therefore dismiss their claim for retention of both deposits without leave to reapply.

Is the Landlord entitled to recovery of the filing fee?

As I have dismissed all the Landlord's claims without leave to reapply, I therefore decline to grant them recovery of the $100.00 filing fee.

Conclusion

I set aside the original Decision and Monetary Order dated December 8, 2024, and substitute them with this Decision and the Monetary Order in favour of the Tenant. As a result, the Decision and Monetary Order in the name of the Landlord are cancelled and of no force or effect.

I dismiss the Landlord's Application, in its entirety, without leave to reapply.

As a result, and pursuant to section 67 of the Act and Guideline 17, I therefore grant the Tenant a Monetary Order in the amount of $1,797.38. 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.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and Monetary Order, nor my authority to issue them, are affected by the delay.

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

Dated: April 10, 2024

Residential Tenancy Branch