Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing was a Review Hearing granted in an Application for Review Consideration made by the Tenants. The Review Consideration ordered that a new hearing be conducted, as the Tenants were unable to attend a hearing on December 3, 2013, through no fault of their own.

This Review Hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for money owed or compensation under the Act or tenancy agreement, for alleged damages and cleaning at the rental unit and an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord had a Witness attend who was not required to provide testimony. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

This Review Hearing was initially scheduled to be heard on February 20, 2014.

On February 17th, the Landlord's Agent wrote a letter marked "EMERGENCY" to the Residential Tenancy Branch requesting an adjournment of the hearing on February 20th, and explained that the Landlord was unable to attend the hearing as he had been in

Europe for a while attending a family funeral and would not be available to attend the hearing.

Based on this and the submissions of the Agent and the Tenants at the first hearing, I granted an Adjournment, although I ordered the Landlord to provide evidence of not being able to attend the hearing, pursuant to the rules of procedure and the Act. The Agent willingly agreed to provide this information. An Interim Decision was provided and should be read in conjunction with this decision.

In evidence for today, the Landlord submitted a copy of his flight itinerary which indicates the flight to Europe was booked on January 29, 2014, and he left the country on February 5, 2014, and returned on February 25, 2014.

Along with the flight itinerary the Landlord also submitted a demand letter and other evidence requesting the Tenants pay triple or double the damages he was claiming for, as he alleges they should have attended the hearing of December 3, 2013. The Landlord did not have leave to provide any further evidence aside from the information confirming he was unable to attend the hearing, and this other evidence would have been excluded, had the Landlord referred to it.

The Landlord was upset from the outset of the hearing as he did not think the Tenants should have been granted a Review Hearing. The Landlord was interruptive throughout the proceedings and had to be cautioned about his conduct several times.

The Landlord had received a monetary judgement against the Tenants in their absence at the December 3, 2013 hearing, although it was clear the Tenants were disputing the Landlord's claims and making counter claims and their hearing had been scheduled and a Notice of Hearing had been served on the Landlord.

In their Application for Review, and at the Review Hearing, the Tenants explained the Landlord had sent them his Application, but did not include a Notice of Hearing for the December 3, 2013 hearing, which is contrary to the Act and rules of procedure.

I explained to the Landlord that the decision to grant a Review Hearing had been made by a previous Arbitrator and I had no authority to change that decision. He stated he did not understand why they had been granted a Review Hearing. I asked if the Landlord had received a copy of the Review Consideration decision granting the new hearing and he responded that he had. I explained the legal process to the Landlord and he reluctantly acknowledged he understood why the Review Hearing was granted. Nevertheless, the Landlord continued to be upset that the Tenants were allowed this Review Hearing.

The Landlord then began presenting his evidence on the claim against the Tenants, requesting a monetary order for alleged damage to countertops in the kitchen and bathrooms, and for alleged cleaning of the balcony.

When I asked the Landlord to explain the amounts he was claiming for these, he testified he was making a claim that was less than the invoice in evidence because he did not amend his Application to include the additional amount. I asked him if he had tried to amend the Application for an additional amount and he said he had not. He then requested that I allow him to amend the Application during the hearing. I declined to allow him to amend his Application at the hearing.

The Landlord then testified it did not matter as he had already filed a different Application for Dispute Resolution for these extra amounts and that Application was scheduled to be heard in June 2014. Neither party had mentioned this parallel Application up to this point in the hearing.

I explained to the Landlord that the purpose of Dispute Resolution was to bring forward all claims to be heard at once and not file multiple Applications. The Landlord argued that the Application was accepted by the "Arbitrator" at the front desk so it must have been allowed. I explained to the Landlord that Arbitrators do not work at the front desk, and that the Information Officers at the front office do not have the discretion to refuse an Application, and that only an Arbitrator may dismiss an Application.

I again asked the Landlord what claims he was making in the June Application and if those claims were the same of any of the claims being made in this hearing, the Landlord replied to me that, "... you will have to show up at the June hearing to find out."

I explained to the Landlord that the principles behind the legislation and natural justice were that all claims should be brought forward at once to avoid a multiplicity of hearings, and that the same claims could not be heard in different Applications.

I again asked the Landlord if he was making the same claims in this Application as the one he has made in June, and he remained evasive and would not fully explain the claims being made in his June Application.
Based on this, I explained to the Landlord that I would be dismissing his Application, as I would not proceed to hear claims that he may already be making in a different Application.

Therefore, **I dismiss the Landlord's Application without making any determinations on the merits of the claims for damages to the rental unit or for cleaning it, as it appears he is making these same claims in a different Application.**

I explained to the Landlord that I would continue to proceed with the Tenants' Application for the security deposit during this hearing.

The Landlord clarified that I was going to proceed with the Tenants' claims and not his, and I explained the Tenants Application would be heard. The Landlord stated he was not going to stay in the hearing and I cautioned him that I was proceeding with the

Tenants' claims even if he left the hearing. The Landlord then disconnected from the hearing.

Issue(s) to be Decided

Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

This tenancy began in July of 2011, with the parties entering a written tenancy agreement and agreeing to rent of $850.00 per month. The Tenants paid a security deposit of $425.00 at the outset of the tenancy.

The Tenants testified that an incoming condition inspection report had been performed, although the condition inspection report entered into evidence by the Landlord had additional writing on it that was not on their copy they received at the start of the tenancy. The Tenants testified that an outgoing condition inspection report was performed, although they did not agree to the outgoing report as the Landlord was making false claims on it, and claims they did not agree with, and that he had altered the condition inspection report from the original.

Both the Landlord and the Tenants submitted condition inspection reports in evidence. The Tenants copy of the initial condition inspection report has no marks on the first two pages where marks or notes should made indicating the condition of the rental unit at the start of the tenancy. On the third page of the condition inspection report there is a note, "No major repairs", and the report is signed by the parties.

However, the Landlord has submitted a version of the condition inspection report which has check marks on the first and second pages as if it had been completed at the outset of the tenancy, and next to the note, "No major repairs", the Landlord wrote, "The apartment is in very good condition."

The Tenants vacated the rental unit on August 31, 2013, and gave the Landlord the forwarding address to return the deposit to that same day. The Tenants testified they put the forwarding address on the outgoing condition inspection report it is indicated on the Landlord's copy in evidence. They explained they also wrote a letter to the Landlord requesting the deposit in full and again providing them with their address. It was acknowledged by both parties during the portion of the hearing that the Landlord attended, that the outgoing condition inspection report did not go well.

The Landlord filed his Application to keep the security deposit on September 12, 2013.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I allow the Tenants claim for the return of the security deposit, although I do not find they are entitled to a return of double the deposit. Under section 38 of the Act, the Landlord had 15 days from the end of the tenancy or receipt of the forwarding address of the Tenants to return the security deposit or file an Application to keep the deposit.

The Landlord did file his claim against the deposit within those times limits, although that Application has now been dismissed and therefore, the Landlord has not established a right to keep the deposit. Nevertheless, the security deposit does not double pursuant to section 38 of the Act, as the Landlord filed on time.

As the condition inspection reports should be examined in relation to the security deposit under the Act, I do not allow the Landlord's version of the condition inspection report as evidence of the condition of the rental unit, as I find it is materially different and appears to have been altered, when compared with the copy of the incoming report as provided by the Tenants. Therefore, I find the Landlord's condition inspection report is unreliable and I will not allow it in evidence, save for the fact it contained the Tenants' forwarding address in writing.

I grant the Tenants a monetary order in the amount of **$475.00**, comprised of the return of the security deposit and the recovery of the $50.00 for the filing fee for the Application. This order must be served on the Landlord and may be enforced in the Provincial Court.

I have dismissed the Landlord's Application without making any determinations on the merits of the claims for damages to the rental unit or for cleaning it, as it appears he is making these same claims in a different Application.

As this is a Review Hearing and the Landlord's Application has been dismissed, **I also order that the Decision and Orders made on December 3, 2013 in the Landlord's Application, are set aside, and are of no force or effect, pursuant to section 82(3) of the Act.**

Conclusion

The Landlord's Application is dismissed as described above, and the Decision and Orders made in the December 3, 2013 hearing are set aside and are of no force or effect.

The Tenants' Application to recover the security deposit is allowed, although the security deposit was not doubled. The condition inspection report entered into evidence by the Landlord was found to be unreliable evidence and it was not considered, save for the forwarding address of the Tenants.

The Tenants are entitled to recover the filing fee for the Application and are granted a monetary order in the amount of **$475.00**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 25, 2014

Residential Tenancy Branch