Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- other remedies, identified as an order for the tenant to remove his personal belongings from storage lockers and the storage room at the rental building; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, EJ ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager for this rental unit and that he had authority to speak on behalf of the landlord company named in this application as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to an order for the tenant to remove his personal belongings from storage lockers and storage room at the rental building?
Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed that this tenancy began on October 15, 2014 for a fixed term of one year after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of $950.00 is payable on the first day of each month. A security deposit of $475.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. Both parties agreed that when this tenancy began, another property manager with the same landlord company signed a tenancy agreement with the tenant. Both parties confirmed that they could not locate a copy of the tenancy agreement.

The landlord seeks an order for the tenant to remove his belongings from storage lockers and a storage room at the rental building. The landlord stated that prior to 2005, tenants in the rental building were given storage lockers to use as part of their tenancy. He confirmed that this practice stopped in 2005 and since the tenant's tenancy began in 2014, the tenant was presumed not to have the use of a storage locker. The landlord indicated that he was informed by a building or maintenance person that the tenant has his personal belongings in storage lockers and other areas of the storage room. The landlord explained that he does not know what specific items the tenant has stored or which lockers or areas of the storage room are being used by the tenant. The landlord stated that he assumes these items belong to the tenant.

The landlord provided a copy of a letter, dated November 25, 2015, from the landlord to the tenant, asking the tenant to remove his personal belongings from the storage room and return the keys by December 31, 2015. Alternatively, the letter states that if the tenant has entitlement to use the storage room, that he provide a copy of the tenancy agreement to the landlord. The landlord provided a copy of a response letter from the

tenant, stating that the tenant has been entitled to use the two storage lockers since the beginning of his tenancy and if the landlord wants the lockers back, the landlord would be required to reduce the tenant's monthly rent by $50.00 beginning on January 1, 2016 or to file a claim at the Residential Tenancy Branch ("RTB").

The tenant stated that since the beginning of his tenancy, he has been given the use of two storage lockers included in his monthly rent. The tenant stated that he currently uses two lockers, not any other spaces in the storage room, and that he is entitled to use these lockers, as the landlord has no proof otherwise. The tenant indicated that other tenants in the same rental building also currently have storage lockers. He indicated that his two lockers are identified by his rental unit number on top of each locker. He maintained that he has used the first two lockers on the right when entering the storage room, but the maintenance person for the rental building asked him to move his belongings from one of the front lockers to the back corner of the same room.

The landlord seeks a monetary order of $475.00 for a pet damage deposit. Both parties agreed that they attended a previous hearing at the RTB approximately six months ago, where a different Arbitrator determined that the tenant was permitted to have a pet at the rental unit. The tenant stated that the Arbitrator also decided that the tenant was not required to pay a pet damage deposit. The landlord disagreed, stating that the pet damage deposit issue was not determined at the last hearing. Neither party provided a copy of the previous decision or could recall the exact date of the hearing.

Analysis

Although neither party provided a copy of the previous hearing decision, I was able to locate a copy and review that decision prior to issuing my decision. The hearings were held on June 9 and 30, 2015 and a decision was issued on June 30, 2015, from a different Arbitrator. The file number for that hearing appears on the front page of this decision.

Storage Locker

I allow the landlord's application for an order for the tenant to remove his personal belongings from the storage lockers and storage room at the rental building.

The tenant stated that he has had the use of two storage lockers since the beginning of his tenancy. Usually only one storage locker, not two, is included in a tenancy agreement. However, storage lockers are not always included in rent as they are considered an additional facility and explained as such in the tenancy agreement.

Simply having use of such two storage lockers for a period of time does not mean that the tenant has permission to use them; the tenant may have simply found empty storage spaces and begun using them without the landlord's knowledge or consent. Other tenants currently using storage lockers does not mean that they are entitled to use them, as these tenants may have begun their tenancies prior to 2005 when storage lockers were given to tenants. Or those tenants may have simply begun using empty storage space without the landlord's knowledge or consent.

I find that the tenant's entitlement to use the two storage lockers requires written proof of same, particularly when there is a dispute as to his entitlement. In this case, the landlord claims that storage locker use was discontinued in 2005, well before the tenant's tenancy began in 2014. I find that it is the tenant's burden to provide this written proof because storage lockers are an additional facility, not usually included in rent in a standard tenancy agreement. I find that the tenant failed to provide written documentation, including a tenancy agreement, addendum or another document, showing his entitlement to use the two storage lockers.

Accordingly, I order the tenant to remove his personal belongings from any storage lockers and any parts of the storage room, that he is currently occupying at the rental building. I order the tenant not to use any storage lockers or the storage room at the rental building to store his personal belongings, for the remainder of his tenancy unless written permission is given by the landlord.

Pet Damage Deposit

I find that the landlord's application to obtain a monetary award for the pet damage deposit is not *res judicata*, meaning that it has not already been decided by the Arbitrator at the previous hearing. The Arbitrator confirmed that the tenant is permitted to have a pet in his rental unit.

The Arbitrator also noted the following with respect to a pet damage deposit, as a caution, but did not make a decision about the matter, as neither party made an application about the tenant having to pay a pet damage deposit:

> *Terms respecting pets and pet damage deposits*
> *18 (1) A tenancy agreement may include terms or conditions doing either or both of the following:*
>
> > *(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;*

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

(2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [limits on amount of deposits] and 20 [landlord prohibitions respecting deposits].

(3) This section is subject to the Guide Dog and Service Dog Act.

After a tenancy has started a landlord may demand a pet damage deposit under subsection (2), above, to permit a tenant to bring in a pet, but that provision only applies to tenant who needs permission, namely, a tenant who has signed a tenancy agreement requiring the permission of the landlord before keeping a pet in the rental unit.

I note the following provision under section 20 of the *Act*:

20 A landlord must not do any of the following:

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

I dismiss the landlord's Application for a monetary award of $475.00 for the pet damage deposit. As noted in sections 18 and 20 of the *Act* as reproduced above, the landlord did not require and the tenant did not pay a pet damage deposit when the tenant first entered into the tenancy agreement. Moreover, the tenant did not obtain permission from the landlord to have a dog, it was the decision of the Arbitrator at the previous hearing that determined that the tenant was entitled to keep his dog. Therefore, the Arbitrator's decision, dated June 30, 2015, was effectively the time that the landlord was required to give permission to the tenant to keep the dog. I find that the landlord did not request a pet damage deposit within a reasonable period of time after receiving the Arbitrator's decision, as the landlord filed its Application on December 23, 2015, almost six months after the decision was issued on June 30, 2015.

At the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlord. I note that I do not have the authority to administer administrative penalties against the landlord, only the Director of the RTB

does. Therefore, the tenant must apply for such a penalty through the required procedure as outlined in the *Act*.

As the landlord was partially unsuccessful in this Application, I find that it is not entitled to recover the $50.00 filing fee from the tenant.

Conclusion

I order the tenant to remove his personal belongings from any storage lockers and any parts of the storage room, that he is currently occupying at the rental building. I order the tenant not to use any storage lockers or the storage room at the rental building to store his personal belongings, for the remainder of his tenancy unless written permission is given by the landlord.

The remainder of the landlord's Application is dismissed 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 *Residential Tenancy Act*.

Dated: February 4, 2016

Residential Tenancy Branch