Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The landlord had applied for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for return of the security deposit and other losses. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Under section 59 of the Act, every applicant is required to provide full particulars with their application as to their claim against the other party and serve the application upon the other party within three days of filing. This requirement is in keeping with the principles of natural justice which provide that a respondent is entitled to be put on notice as to what they are being charged with and the opportunity to respond to those particular allegations.

The Rules of Procedure were developed to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. Rule 2.5 provides that a detailed calculation of any monetary claim being made must accompany the Application when it is served upon the respondent, along with all evidence that is available at the time of filing. If an applicant's evidence is not available at the time of filing it is to be served as soon as possible but no later than 14 days before the hearing, as provided under Rules 3.11 and 3.14. If a party seeks to amend their claim, this is accomplished by serving an Amendment to an Application for Dispute Resolution as provided under Rule 4.1.

The landlord completed an Application for Dispute Resolution on June 14, 2016 indicating he was seeking compensation of $5,903.00 from the tenant. The landlord did

not provide a breakdown, a detailed calculation, or Monetary Order Worksheet with the Application. The landlord sent the Application to the tenant via registered mail on or about June 14, 2016. The tenant confirmed receipt of the landlord's Application and stated he did not know how the landlord calculated the amount claimed of $5,903.00.

In pointing out that the landlord did not provide a calculation in support of the amount claimed, the landlord stated that he was seeking even more compensation from the tenant, in the amount of $10,172.40. The landlord pointed to a listing that appears as the last document in the landlord's binder of evidence.

I noted that on November 09, 2016 the landlord submitted a binder of evidence to the Residential Tenancy Branch. The landlord testified that he sent it to the tenant the same day via registered mail. The tenant acknowledged receiving the landlord's binder of evidence on November 10, 2016 but stated that he was unaware that the landlord was now seeking compensation in the amount of $10,172.40.

I noted that the landlord did not prepare an Amendment to an Application for Dispute Resolution. The landlord claimed that he was not advised the he need to prepare an amendment or any other form when he dropped off the evidence binder.

I find the landlord failed to provide full particulars of his claims against the tenant by including a detailed calculation along with his Application for Dispute Resolution as required under section 59 of the Act and Rule 3.1. Nor, did the landlord amend his Application in accordance with rule 4.1 of the Rules of Procedure. Considering the tenant stated he was unaware as to how the landlord calculated the original claim and unaware the landlord was seeking to increase the claim, and upon review of the listing in the binder I was of the view that the listing was not sufficiently clear in the absence of an Amendment properly served upon the tenant. Therefore, I declined to further consider the landlord's claims against the tenant and I dismissed the landlord's application with leave to reapply.

As for the tenant's Application, I heard that he sent it to the landlord via registered mail on June 28, 2016. The landlord confirmed receipt of the tenant's Application and stated that he did not understand how the tenant calculated the amount of $2,899.00 that appears on his Application. I noted that the tenant provided two amounts in the details of dispute box that appears on the Application: $1,624.24 for "utilities and services" plus $637.50 for return of the security deposit; however, I noted that these amounts do not add to $2,899.00. The tenant pointed out that he is now seeking $2,961.96 and that he provided a calculation for this amount by way of a written submission sent to the landlord via registered mail on November 18, 2016.

The written submission of November 18, 2016 does not constitute an Amendment and I declined to consider it further, just as I did with the landlord's listing that was in the landlord's binder. Any other claims the tenant intends to make against the landlord may be accomplished by way of another application for dispute Resolution.

At the time of serving the tenant's Application, two amounts were provided but the tenant did not provide a detailed calculation to demonstrate how he arrived at the sum of $1,624.24 for utilities and services as required under section 59 of the Act and Rule 3.1. Therefore, I did not consider this part of the tenant's claim further and I dismissed it with leave.

The only portion of the tenant's claim that I found to be sufficiently clear and obvious in his Application was return of the security deposit in the amount of $637.50. Since this claim was sufficiently clear and the landlord requested authorization to retain it in his Application, I informed the parties that I would proceed to resolve the dispute concerning the security deposit only.

Issue(s) to be decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

It was undisputed that the tenancy started on December 15, 2012 and the tenant paid a security deposit of $637.50. At the start of the tenancy the parties participated in a inspection of the property and the landlord prepared a move-in inspection report, a copy of which was given to the tenant. The last day of tenancy was May 31, 2016 and on that day the both the landlord and the tenant attended the property for purposes of participating in the move-out inspection.

I heard conflicting evidence as to the events that transpired on May 31, 2016. The tenant testified that he prepared the move-out inspection report and presented it to the landlord for signature but the landlord would not sign it. The landlord testified that he prepared the move-out inspection report and presented it to the tenant but the tenant refused to sign it.

The tenant testified that on June 1, 2016 he delivered the keys for the rental unit, along with a letter that provides his forwarding address, to the landlord's mother who resides

in another unit on the residential property. The landlord acknowledged receiving these things from his mother on June 2, 2016.

On June 14, 2016 the landlord defiled his Application for Dispute Resolution and the landlord recorded the tenant's service address as being the same address that appears on the letter given by the tenant on June 1, 2016.

The tenant stated that he was agreeable to one deduction from his security deposit, for carpeting cleaning, so long as it was between $100.00 and $200.00. The landlord submitted that the carpet cleaning cost him $472.50 as evidence by an invoice dated November 7, 2016. The landlord explained that he had the carpet cleaning done after repairs were made to the property and the rental unit was repainted. The tenant was not agreeable to a deduction of $472.50 for carpet cleaning.

The landlord pointed out that the tenant had previously indicated that he was agreeable to carpet cleaning in written communication to the landlord. However, I noted that the tenant did not specify an amount in his written communication.

Analysis

Upon consideration of the relevant evidence before me, I provide the following findings and reasons.

Although the tenant was agreeable to compensating the landlord for carpet cleaning, to an extent, the tenant did not authorize a specific amount to be deducted from the security deposit in writing. Nor, did the landlord have the prior authorization of an Arbitrator to make deductions from the security deposit. Accordingly, I find that under section 38(1) of the Act the landlord had to either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later.

In this case, the tenancy ended May 31, 2016 and the landlord acknowledged receiving the tenant's forwarding address on June 2, 2016. The later of these two dates is June 2, 2016 and I am satisfied that he filed an application to retain the security deposit within 15 days when he filed on June 14, 2016. Accordingly, I find the landlord met his obligation under section 38(1) of the Act; however, for reasons provided earlier in this decision, I have dismissed the landlord's claims against the tenant. Although I have given the landlord leave to reapply, there is no obligation for the landlord to reapply and

I find it appropriate to make a determination with respect to the security deposit at this time.

The Act provides that a tenant may extinguish his right to return of the security deposit but only where the tenant fails to participate in a move-in or move-out inspection with the landlord despite receiving two opportunities to do so. I am satisfied the tenant did participate in the move-in and move-out inspection with the landlord and did not extinguish his right to return of the security deposit. Refusal to sign the move-out inspection report in itself does not extinguish the tenant's right to return of the security deposit.

In light of all of the above, I order the landlord to return the security deposit to the tenant in the full amount of $637.50.

I make no award for recovery of the filing fee.

Conclusion

The landlord's application has been dismissed with leave.

The tenant's request for return of the security deposit has been granted and the tenant is provided a Monetary Order in the sum of $637.50. Any other claims the tenant may have against the landlord are also dismissed with 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: December 06, 2016

Residential Tenancy Branch