Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on August 27, 2016. The Tenants filed seeking a Monetary Order for: for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; to keep all or part of the security and/or pet deposit; Order the Landlord to comply with the *Act,* Regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the male Tenant. Each person gave affirmed testimony and I heard the Tenant state he would be representing both Tenants in these matters. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenants' application for Dispute Resolution; hearing documents, and evidence. No issues relating to service or receipt were raised. As such I accepted the written and oral submissions from the Tenants as evidence for these proceedings.

The Tenant asserted they had not received any evidence from the Landlord. The Landlord was not able to speak to the method or date she served the Tenants with copies of her evidence. The Landlord described documents which she submitted to the Residential Tenancy Branch (RTB); however, she was not able to make submissions as to the date those documents were submitted.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Tenants had not received the Landlord's evidence, and the Landlord was unable to prove it was served upon the Tenants, I declined to consider the Landlord's documentary evidence. I did however consider the Landlord's oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Tenants entitled to additional compensation relating to the 2 Month Notice to end tenancy for landlord's use of the property?
2. Have the Tenants proven entitlement to reimbursement for garbage collection?
3. Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

The Tenants entered into a fixed term tenancy agreement with the previous owner. That tenancy commenced on February 1, 2007 and switched to a month to month tenancy after January 31, 2008. As per that agreement rent began at $850.00 per month and was subsequently increased throughout the tenancy up to $970.00 per month. In January 2007 the Tenants paid $425.00 as the security deposit and $200.00 as the pet deposit. On January 23, 2007 a condition inspection report form was completed and signed by both parties.

In February 2014 the respondent Landlord purchased the property from her father. The Tenants remained in the unit and continued their tenancy under the previously agreed upon terms.

On May 16, 2016 the Landlord served the Tenants a 2 Month Notice to end tenancy for landlord's use which listed an effective date of July 31, 2016 for the following reason:

> *The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*
>
> [Reproduced as written]

The Tenants vacated the rental unit on July 31, 2016 in accordance with the 2 Month Notice. The Tenants used the compensation equal to one month's rent as payment for their last month's rent, pursuant to section 51(1.1) of the *Act.*

Although the parties met at the rental unit on July 31, 2016 to exchange the keys and do a quick walk through; the Landlord did not complete a written condition inspection report form. The Landlord was provided the Tenants' forwarding address in writing on July 31, 2016.

The Tenant submitted they are seeking compensation for the wrongful eviction because the Landlord did not renovate or repair the rental unit. He asserted the Landlord evicted them for the purpose of selling the house not renovating it. He stated the house sold on November 30, 2016.

I heard the Tenant state that after they were served the eviction notice; they asked the Landlord for a copy of their tenancy agreement. Upon receipt and review of the copy of the tenancy they received after getting the Notice, the Tenants determined that garbage removal was supposed to have been included in their tenancy. The Tenants now seek $2,315.16 to recover the payments they made for garbage collection during the eight and half years of their tenancy.

The Tenant initially stated he was never aware that garbage collection was included in his tenancy as he was not present when the agreement was entered into by his wife. The Tenant then reviewed the tenancy agreement he had before him during the hearing and I heard him state he had signed that tenancy agreement.

The Tenants also sought compensation for double their security deposit because the Landlord did not return the full amount of their deposits. He asserted he provided the Landlord a print out of the amount of interest earned on their deposits during their meeting on July 31, 2016. He said the Landlord told him everything looked fine with the rental unit. Four days later on Thursday, the Landlord emailed them saying she was

withholding $100.00 from the deposit because there was dog feces in the yard. They received a cheque dated August 4, 2016 in the amount of $543.08 which was sent to them in the mail, which was partial return of their deposits plus $18.08 interest.

I heard the Landlord state that they had expansive plans to renovate the rental unit; however; after they had a septic inspection and home inspection completed they decided to sell the property. She submitted that no renovations or repairs were completed and the property was listed for sale on August 19, 2016. The property sold and the sale completed in November 2016.

The Landlord argued that she did not complete a move out condition inspection report form because she was never provided with a copy of the original move in condition inspection report form.

The Landlord submitted the issue relating to payment of garbage collection was never brought to her attention. She questioned the Tenant's evidence as it consisted of only an email and not a proper invoice and questioned what the statute of limitations would be.

The Landlord confirmed she withheld $100.00 from the security deposit and that she requested the Tenants return to the property and pick up the dog feces. She asserted that it was never her intention to keep the $100.00; she was only holding it until they did what she requested. However, the Tenants never returned to clean up the waste and she kept the $100.00.

The Landlord stated she did not have the Tenants' written permission to withhold the money from their deposits; she did not file an application for Dispute Resolution against the deposits; and she did not have an order issued by an Arbitrator of the RTB granting her authority to keep the deposit.

The Tenant disputed the Landlord's submissions and argued he had seen a for sale sign on the property on August 10, 2016. He argued it was listed for sale earlier than what the Landlord said during this hearing.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding the claim for compensation relating to the 2 Month Notice

In determining this part of the Tenants' application I first turned to section 51(2) of the *Act* which stipulates that in addition to the amount payable under subsection (1) (*compensation equal to one month's rent that can be used as last month's rent*), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49, within a reasonable period after the effective date of the notice; or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice; the landlord **must** pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I accept the undisputed evidence that the Landlord did not conduct renovations or repairs on the rental unit, which was the reason listed on the 2 Month Notice. Therefore, steps had not been taken by the Landlord to accomplish the stated purpose for ending the tenancy under section 49 of the *Act.* Accordingly, I grant the Tenants' application in the amount of **$1,940.00** (2 x $970.00 monthly rent), pursuant to section 67 of the *Act.*

Regarding the request for reimbursement for garbage removal costs

As stated above, section 7 of the *Act* requires that the Tenants must do whatever is reasonable to minimize any damage or loss they may have suffered due to any breaches of the tenancy agreement made by the Landlord.

I then considered estoppel which is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

After consideration of the foregoing, I find the Tenants submitted insufficient evidence to prove they were entitled to reimbursement of eight and half years of garbage removal costs. I made that finding in part, in the presence of the Tenant's contradictory submissions relating to his knowledge of what was contained in the tenancy agreement and then confirming he had signed that agreement. When a person signs a legal contract, such as a tenancy agreement, the burden is upon that person to have a full understanding of the terms of that agreement before signing in agreement to those terms.

Furthermore, it should be noted that the Tenants negotiated the terms of their tenancy with the previous owner, seven years prior to this Landlord purchasing the property. If the Tenants had any doubt regarding their obligation to pay for garbage removal during this tenancy, they ought to have brought the issue forward when they first began paying for the service in 2007, and not wait for the tenancy to be ended before seeking a remedy; as to do so would not meet the requirements set out in section 7 of the *Act.* Accordingly, I find the Tenants are estopped from seeking recovery of the garbage removal costs and their claim for $2,315.16 is dismissed, without leave to reapply.

Regarding the claim for double the security and pet deposits

A landlord and tenant together must inspect the condition of the rental unit and complete a condition inspection report form, in accordance with the Regulations, at move-in and move-out respectively; pursuant to sections 23 and 35 of the *Act*.

Section 14 of the Regulation provides that the condition inspection must be completed when the rental unit is empty of the tenant's possessions, unless the parties agree on another time.

If the landlord does not complete condition inspection report forms, in compliance with sections 23 and 35 of the *Act,* the right of the landlord to claim damages against the security and/or pet deposit is extinguished, pursuant to sections 24 and 36 of the *Act.*

Extinguishment does not prevent a landlord from filing a claim to seek monetary compensation for damages. Rather, the extinguishment clause means the landlord cannot retain the deposits to offset or apply against the cost to repair damages. If a landlord extinguishes their right to claim against the security and/or pet deposit the

landlord **must** return the security and pet deposits to the tenant **in full;** in accordance with section 38(1) of the *Act.*

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits in full, to the tenant with interest.

This tenancy ended July 31, 2016 and the Landlord received the Tenants' forwarding address in writing on July 31, 2016. Therefore, the Landlord was required to return the full security and pet deposits, plus interest, to the Tenants no later than August 15, 2016. The Landlord returned only a portion of the deposits and interests, withholding $100.00.

Notwithstanding the Landlord's submission that she did not have the original move in condition inspection report form; the Landlord did not complete a written condition inspection report form at move out. Neither the *Act* nor the Regulations have a requirement that the exact same condition inspection report form has to be used for both the move in and move out inspections. While most forms do include a section for move in and move out notations, there are circumstances when the original form may not be obtainable, such as in cases when ownership of the property had changed; which is the case here.

Therefore, based on the above, I find the Landlord extinguished their right to claim against the security and pet deposits, pursuant to section 23 of the *Act.* As such the Landlord was required to return the full amount of the deposits plus the interest to the Tenants no later than August 15, 2016, pursuant to section 38(1) of the *Act.*

Based on the above, I find the Landlords are now subject to section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that $18.32 of interest has accrued on the Tenant's $425.00 security deposit plus the $200.00 pet deposit from January 2007 and up to this Decision date of March 1, 2017.

Based on the above, I find the Tenants submitted sufficient evidence to prove the merits of their request for the return of double their security deposit plus interest, pursuant to section 38 of the *Act,* less any payments received to date. Accordingly, I grant the application for return of double the security and pet deposits in the amount of **$725.24**

(2 x ($425.00 + $200.00) + $18.32 interest – payments received $543.08), pursuant to section 67 of the *Act.*

Filing Fee and Monetary Order

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenants the sum of **$2,765.24** ($1,940.00 + $725.24 + $100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **$2,765.24.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenants were partially successful with their applicant and were award $2,765.24 in monetary compensation.

This decision is final, legally binding, and 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: March 01, 2017

Residential Tenancy Branch