Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

These hearings were convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on February 23, 2017. The Tenant applied for the following issues: for the return of her security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement; and to recover the filing fee from the Landlords. The Tenant amended her Application on April 20, 2017 requesting double the return of her security deposit.

Preliminary Issues

A hearing took place to determine the above matters on May 3, 2017. The Application was before a different Arbitrator and the hearing was attended by the Tenant and legal counsel for the Landlords. However, that hearing was adjourned because the time limit set for that hearing had been reached.

The parties were sent an Interim Decision on May 5, 2017 by that Arbitrator which set the reconvened hearing to take place with that Arbitrator on June 20, 2017. The Interim Decision requested the Landlords to serve to the Tenant and to submit to the Residential Tenancy Branch clearer photographs because the ones provided were in black and white.

However, that Arbitrator was not available to conduct this reconvened hearing for the foreseeable future due to medical reasons. Therefore, the Residential Tenancy branch scheduled the file for determination by me.

The same parties appeared for this reconvened hearing. The parties were informed that even though they had provided evidence in the previous hearing, as I had not heard any evidence in this matter, we would need to start from the beginning with all the evidence.

Legal counsel provided submissions and the Tenant gave affirmed testimony. The hearing process was explained and no questions were asked of the process.

Legal counsel confirmed that the Landlord received the Tenant's: Application; amended Application; and the Tenant's seven photographs. The Tenant explained that she had submitted some documents prior to the May 3, 2017 hearing, namely a letter containing her forwarding address and a request for compensation for a damaged bed. Legal counsel denied receipt of this evidence and it was also not before me. Therefore, I determined that this evidence had not been provided. However, the Tenant was not prohibited from giving that evidence into oral testimony.

The Tenant confirmed receipt of the Landlords' 35 pages of documentary and photographic evidence but stated that the Landlords had not served her with clearer copies of the photographs; I noted that this evidence was also not before me as required by the May 5, 2017 Interim Decision. Legal counsel confirmed that the Landlords had not provided clearer photographs but stated that they were not significant to the rebuttal evidence that had been provided. Therefore, I continued the hearing relying only on the black and white photographs the Landlords had provided for this file.

Issue(s) to be Decided

- Is the Tenant entitled to double the return of her security deposit in the amount of $900.00?
- Is the Tenant entitled to the replacement cost of alleged damage caused to her bed for $800.00?

Background and Evidence

The parties agreed that this tenancy started on October 1, 2011 on a month to month basis. Rent was payable by the Tenant in the amount of $900.00 on the first day of each month. The Tenant paid the Landlords a security deposit of $450.00 at the start of the tenancy which the Landlords still hold in trust.

The parties confirmed that the tenancy ended when the Tenant gave written notice in November 2016 to end the tenancy for December 31, 2016. The parties confirmed that the Tenant had served the Landlords with her forwarding address on a letter dated January 20, 2017 which was sent to the Landlords by registered mail. That letter was received by the Landlords on January 24, 2017. Legal counsel confirmed that the Landlords had not made an application to keep the Tenant's security deposit.

With respect to the Condition Inspection Report (the “CIR), the parties provided the following evidence. The Tenant testified that the Landlords had attached a CIR to the tenancy agreement at the start of the tenancy but this was left black and was not signed by any of the parties. Legal counsel stated that the Landlords had not completed a move-in CIR because the rental unit was brand new.

Legal counsel stated that the Landlords had arranged to complete a move-out condition inspection of the rental unit on January 1, 2017 which was then re-scheduled by mutual agreement to January 3, 2017. However, the Tenant was unable to attend on this date because she was ill and therefore, the Tenant was given a final opportunity to appear on January 6, 2017 which she failed to do. Legal counsel submitted that because the Tenant failed to appear, the Tenant had extinguished her right to the return of her security deposit.

The Tenant disputed the Landlords’ evidence stating that she contacted the Landlords several times by text message to arrange a move-out condition inspection but no arrangement was made by them. The Tenant disputed that she was ill and testified that she was not made aware of a final opportunity to complete the move-out CIR. The Tenant requests that because the Landlords failed to meet their obligations to complete the CIR, she now claims double the return of her security deposit for a total amount of $900.00. The Tenant confirmed she had not given any written consent to the Landlords for them to keep her security deposit.

The Tenant was asked to explain the remainder of her $900.00 claim as there was no breakdown or Monetary Order Worksheet before me. The Tenant explained that $100.00 was for the recovery of her filing fee and the remaining $800.00 was for the replacement of her bed.

The Tenant testified that in November 2016 she noticed water coming up from the floor in the dining room. The Tenant called the Landlords who sent over a contractor to examine the leak. The Tenant testified that the Landlords enlisted a series of restoration companies to find the source of the water leak during which time, the floors were ripped up, and the Tenant had to endure continued flooding.

The Tenant explained that her box spring and mattress were sitting on the floor in the bedroom which then ended up soaking up the water on the floor which led to the damage of her bed. The Tenant claims $800.00 for the replacement cost of her bed. The Tenant did not provide any evidence to verify this amount explaining that she cannot afford to replace the bed at this moment in time and therefore had estimated this cost. The Tenant provided one photograph into evidence showing water by her bed.

Legal counsel acknowledged that there was a water leak in the rental unit but stated that the Landlords were diligent and expeditious in getting the problem looked at. Legal counsel explained that despite several attempts by several restoration companies, the source of the water leak was difficult to identify. Legal counsel submits that because there was no sign or source of the water leak, the Landlords concluded that the source of the water must have come from the Tenant directly or through the Tenant's negligent action.

Legal counsel denied stated that the Tenant provided no receipt, proof of purchase, proof of damage, or other evidence to support a claim for compensation for the mattress or any other personal property.

Analysis

I first turn my mind to the Tenant's Application for the return of double her security deposit. Section 24(2) of the Act provides that a landlord extinguishes their right to make a claim for damage to the rental unit if they have failed to complete a move-in CIR.

In this case, I am satisfied based on the undisputed evidence before me that the Landlords failed to complete a move-in CIR as required by Section 23(4) of the Act. Even if a rental unit is brand new, a landlord is still required to follow the reporting requirements of the Act in documenting the state of the rental unit. Therefore, I find the Landlords extinguished their right to keep the Tenant's security deposit for damage to the rental unit at the end of the tenancy.

Legal counsel argued that the Tenant had extinguished her right to have the security deposit returned pursuant to Section 36(1) of the Act because the Tenant had failed to take part in the move-out condition inspection. However, the parties provided conflicting oral evidence to support this.

In the absence of any evidence from the Landlords that they had arranged the move-out condition inspection to be conducted on two occasions and had a given the Tenant an approved notice (RTB-22) of final opportunity to conduct the condition inspection, I am not satisfied by the Landlords' evidence that the Tenant was given an opportunity or failed to take part in a move-out condition inspection.
Even, if the Landlords were able to prove that the Tenant failed to take part in the move-out condition inspection, Policy Guideline 17 to the Act states that the party who breached their obligation first will bear the loss. Therefore, as the Landlord breached the

Act in completing the move-in CIR, the evidence pertaining to the move-out CIR is not relevant.

Furthermore, the Act contains comprehensive provisions on dealing with a tenant's security deposit at the end of the tenancy. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

Based on the undisputed testimony and evidence of the Tenant, I find the Tenant served her forwarding address in writing to the Landlords by registered mail in accordance with the Act and that the Landlords received this on January 24, 2017. Therefore, the Landlords had 15 days from January 24, 2017 to repay the security deposit as they had extinguished their right to make a claim for damages from it, or to make an application to claim against it for reasons other than damage to the rental unit.

There is no evidence before me that the Landlords made an Application within 15 days of the ending of the tenancy or obtained written consent from the Tenant to withhold it. Therefore, I find the Landlords also failed to comply with Sections 38(1) and 38(4) (a) of the Act, but continue to hold the Tenant's security deposit.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlords.

At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment or to deductions to be made, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later or return it. It is not enough that a landlord feels they are entitled to keep or make deductions, based on unproven claims. A landlord may only keep the security deposit or make deductions from it through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenant is now entitled to double the return of her security deposit in the amount of $900.00.

I now turn my mind to the Tenant's Application for monetary compensation for alleged damage to her bed as a result of the flooding in the rental unit. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

By using the above test, I find the Tenant has failed to meet the burden to prove she is entitled to $800.00 for replacement of her bed. I make this finding because the Tenant has failed to convince me that the flooding in the rental unit occurred as a result of the Landlord's negligence or breach of the Act. While, I find the Landlord failed to show that the flooding occurred due to the Tenant's negligence as there was no independent corroborating evidence to show this, certainly the Tenant's oral evidence does not satisfy me of any breach as I find the Landlord took reasonable and diligent steps to examine the flooding issue.

In addition, I find the Tenant has failed to show that there was damage or loss to her bed that warranted its replacement. The Tenant relied on one photograph showing water by the bed but this does not show the extent of damage to the box spring and that this continued to the mattress rendering it useless. Furthermore, the Tenant provided insufficient evidence that the bed she claims she has to replace is for a loss equivalent to $800.00. In this case, an estimate for the replacement of a similar bed would have been essential evidence for me to verify the loss being claim. However, this evidence was not before me.

Lastly, I find it reasonable to conclude that a box spring mattress is not designed to sit directly on the floor but is designed to be placed onto a frame with legs. Had the Tenant taken these steps, then this could have avoided or mitigated any damage to her bed. Based on the Tenant's failure to meet the above test, I decline the Tenant's claim for the replacement cost of her bed.

As the Tenant has been successful in part of her claim, pursuant to Section 72(1) of the Act, I also award the Tenant the filing fee of $100.00 for the cost of having to make this Application. Therefore the total amount awarded to the Tenant is $1,000.00.

The Tenant is issued with a Monetary Order which must be served on the Landlords. The Tenant may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlords fail to make payment in accordance with the Tenant's written instructions. The Landlords may also be liable for any enforcement costs incurred by the Tenant. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlords breached the Act by failing to meet the condition reporting requirements of the Act and not dealing properly with the Tenant's security deposit. Therefore, I grant a Monetary Order in the amount of $1,000.00 for this breach, inclusive of the filing fee. The Tenant's claim for the replacement cost of her bed is dismissed without leave to re-apply.

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

Dated: June 20, 2017

Residential Tenancy Branch