Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 31, 2018 (the "Application"). The Tenant applied for the return of the security deposit and pet damage deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant and Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

The Tenant confirmed at the outset that he was requesting double the security deposit and pet damage deposit back.

L.C. brought up her role in relation to the tenancy at the outset. L.C. confirmed she acted as agent for P.C., the owner of the rental unit, during the tenancy. In my view, it is appropriate that L.C. is named in the Application as a Respondent given she acted as agent for P.C. and therefore meets the definition of "landlord" in section 1 of the *Residential Tenancy Act* (the "*Act*").

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed they received the hearing package and Tenant's evidence. The Tenant confirmed he received the Landlords' evidence. Neither party raised any issues in relation to service.

All parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence

and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to the return of double the security deposit and pet damage deposit?

2. Is the Tenant entitled to compensation for monetary loss or other money owed?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed there was a written tenancy agreement in this matter. The Tenant testified that the Landlords were both landlords on the tenancy agreement. L.C. testified that only P.C. was the landlord on the tenancy agreement. L.C. said her name was on the agreement as the agent for P.C. and the Tenant agreed with this. Both parties agreed the Tenant and a second individual were the tenants on the agreement. The Tenant thought the tenancy started January 1, 2013. L.C. testified the tenancy started January 1, 2014.

Both parties agreed on the following. The tenancy was a one-year fixed term tenancy that became a month-to-month tenancy. Rent was $2,200.00. The Tenant paid a $1,100.00 security deposit and $1,100.00 pet damage deposit. The Landlords still hold these deposits. The agreement is signed by the Tenant and L.C.

The Tenant testified that he vacated the rental unit April 30, 2018. The Landlords testified the Tenant vacated May 1, 2018.

L.C. testified that she received the Tenant's forwarding address by text message on May 10, 2018 and the Tenant agreed with this. The Landlords did not take issue with the form of the forwarding address.

Both parties agreed on the following. The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the

security deposit or pet damage deposit. The Landlords did not apply to keep the security deposit or pet damage deposit.

The Tenant testified that no move-in inspection was done and he was not offered two opportunities to do an inspection.

L.C. testified as follows. A move-in inspection was done around January 1, 2014. L.C. did the inspection and the Tenant was present. The unit was empty at the time. A Condition Inspection Report was not completed.

The Tenant testified that no move-out inspection was done. Neither of the Landlords could say that a move-out inspection was done. P.C. did not know whether the Tenant was offered two opportunities to do a move-out inspection.

In relation to the Tenant's claim for compensation, he requested $12,000.00 due to black mold in the unit. In the Application, the Tenant indicated the black mold lead to coughing, shortness of breath and stress for months.

The Tenant testified as follows in relation to his claim for $12,000.00. The washing machine and sink in the unit leaked. The leaks caused black mold to grow in the unit. He told L.C. about the leaks; however, L.C. would say that P.C. had no interest in spending money on the unit or repairs.

The Tenant further testified as follows. In October of 2017, the concierge of the building had to get involved because the water damage in the unit was a potential threat to other units in the building. The concierge hired a plumbing company. The plumbing company attended the unit October 27, 2017. L.C. also attended the unit. L.C. asked the plumbing company to rip up the floor and carpet because of the damage but they would not do so given they were hired by the concierge. The walls and floors were tested on October 27, 2017 and the tests showed black mold throughout the unit.

The Tenant further testified as follows. The Landlords reduced rent to $1,700.00 per month given the situation. L.C. implied repairs would be done. Repairs were never done. The mold got worse. The Landlords received a statement saying their insurance would not cover the cost of repairs because the leak was occurring for a long time and was not dealt with. He never heard from L.C. again. He then received a call that P.C. was selling the unit. He never heard from L.C. again until after he had moved out.

The Tenant only briefly mentioned health issues caused by the mold in his submissions.

The Tenant said it was his understanding he had a right to withhold rent under the *Act* if there was an issue with the unit that was causing health issues. The Tenant said the basis for his request for the $12,000.00 is that he continued to pay rent as he was under the impression repairs would be done and he would get to continue living at the rental unit. He said he would have withheld rent otherwise. He is asking that the rent he paid be reimbursed. The Tenant could not point to what section of the *Act* would have allowed him to withhold rent in the circumstances described. He said he thought tenants have a right to withhold rent until repairs are done if a rental unit is uninhabitable due to health issues. The Tenant confirmed he did not make any repairs himself. He confirmed the entire basis for his claim is that he had a right to withhold rent under the *Act*.

The Landlords testified as follows. The mold was from the leak in the sink, not the washer. The Landlords did not know about the leak because the Tenant never told them about it until L.C. attended the unit October 24, 2017. The Tenant told the property manager of the building about the problem but did not tell the Landlords. The Landlords had no idea there was mold in the unit. The Tenant only told the Landlords about the washing machine leaking. The Landlords were told about the washer in October and it was fixed in November.

Analysis

The following was not in dispute. The Tenant paid a $1,100.00 security deposit and $1,100.00 pet damage deposit. The Landlords received the Tenant's forwarding address in writing May 10, 2018. The Landlords still have the deposits. The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the deposits. The Landlords did not apply to keep the deposits.

The parties gave conflicting evidence about whether a move-in inspection was done. Regardless of which version of events I accept, I find the Tenant did not extinguish his rights in relation to the deposits under section 24(1) of the *Act*.

Based on the testimony of the parties in relation to a move-out inspection, I find the Tenant did not extinguish his rights in relation to the deposits under section 36(1) of the *Act*.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit and pet damage deposit held at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from receipt of the Tenant's forwarding address in writing on May 10, 2018 to repay the deposits with interest or apply for dispute resolution claiming against the deposits.

There is no issue that the Landlords did not repay the deposits or apply for dispute resolution claiming against them. I find the Landlords failed to comply with section 38(1) of the *Act*. Based on the testimony of the parties, I find that none of the exceptions in sections 38(2) to 38(4) of the *Act* applied.

Given the Landlords did not comply with section 38(1) of the *Act*, pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the deposits and must pay the Tenant double the amount of the deposits. The Landlords are required to return $4,400.00 to the Tenant. I note that there is no interest owed on the deposits as the amount of interest owed has been 0% since 2009.

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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:
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> - 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.

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

In relation to the Tenant's claim for $12,000.00, I do not accept that the Tenant was entitled to withhold rent under the *Act* in the circumstances described. Section 26 of the *Act* requires tenants to pay rent "whether or not the landlord complies with this Act, the regulations or the tenancy agreement" unless they have a right to withhold rent under the *Act*. The *Act* only permits a tenant to withhold rent in very specific circumstances. I cannot find that the Tenant has shown he had authority under the *Act* to withhold rent. The Tenant said this was the basis for his claim.

I note that the Application refers to the Tenant experiencing health issues because of the mold. The Tenant only spoke to this issue very briefly at the hearing. The Tenant did not submit any evidence to support his position that the mold caused health issues.

I find the Tenant has failed to prove his claim for the $12,000.00 and I decline to award the Tenant compensation.

As the Tenant was partially successful in this application, I grant him reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of $4,500.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of $4,500.00 and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

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: September 10, 2018

Residential Tenancy Branch