Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S**

Introduction
This hearing was re-convened after the issuance of a September 17, 2019 interim decision. I determined that the landlord's application could not be heard on September 17th because the issue of the security deposit was being heard by a different arbitrator on October 24th. It was determined that the other arbitrator was seized of the matter and this hearing would need to be reconvened to a date after the decision was issued regarding the security deposit.

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The tenant attended the hearing and the landlords were represented at the hearing by their son, SO ("landlord's agent"). The tenant confirmed receipt of the landlord's Application for Dispute Resolution and advised he had no concerns with timely service of documents. I find the tenant was served in accordance with section 89 of the *Act*.

Preliminary issue
At the outset of the hearing, two different sets of parties called into the teleconference. It was determined that an administrative error had occurred and the parties in this hearing were redirected to call into another teleconference. The parties called into a new teleconference and it re-commenced with me at approximately 11:06 a.m.

Preliminary Issue

The issue of whether to allow the landlord to retain the security deposit was determined by the previous arbitrator on October 25, 2019, referenced on the cover page of this decision. In that decision, the arbitrator determined a tenancy agreement was entered into and that the tenancy ended on April 1, 2019. The arbitrator further determined the landlord is required to return the tenant's security deposit, doubled in accordance with section 38 of the *Act*. I find the portion of the landlord's application seeking to retain the security deposit has already been determined and I dismissed it without leave to reapply at the commencement of the hearing.

Preliminary Issue

At the commencement of the hearing, the landlord's agent sought an adjournment of the hearing. The landlord's agent advised that he had additional evidence to produce that would assist him in his claim, namely a condition inspection report. Further, the landlord's agent claimed only his father could provide the testimony to prove his case since his father was 'in the middle of the ocean' and unreachable by phone. Although the landlord's agent confirmed he was capable of giving evidence at the hearing, his father would be more efficient.

In support of the adjournment application, the landlord's agent referred me to a written request for adjournment filed by the landlord on October 3, 2019. In his letter, the landlord writes:

> Prior to receiving the [notice of dispute resolution proceedings] we booked non-refundable travel out of Canada departing November 17, 2019 and returning December 22, 2019. We are a retired couple in our eighties attempting to travel as extensively as possible while our health permits. (No future house sitters). We will be in the Amazon delta with no reasonable communications for the hearing date. We are therefore dependent on your review of the documentation provided should the hearing date continue as scheduled.

The tenant was opposed to the adjournment application as this is the second hearing he's attended regarding the landlord's application and he's attended two other hearings for his own application for a return of the security deposit.

I considered Rule 7.9 of the Residential Tenancy Branch Rules of Procedure, establishing the criteria for determining the tenant's request.

1. the likelihood of the adjournment resulting in a resolution;
2. the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;

3. whether the adjournment is required to provide a fair opportunity for a party to be heard; and
4. the possible prejudice to each party.

I determined as follows:

1. The request for the adjournment was not requested to facilitate settlement of the issues. Neither party indicated they were interested in settling the landlord's claim.
2. The landlord knew the date set for the hearing and made a conscious choice to take his vacation rather than attend the teleconference hearing. The landlord chose to send an agent to appear on his behalf and/or requested that I review the landlord's evidence in his absence.
3. Fair opportunity to be heard examines whether the adjournment is sought by a person who requires the help of a lawyer or legal advocate or has a language or cognitive barrier or significant medical condition requiring assistance. None of those applied to either of the landlords.
4. Neither party would suffer financial loss due to the delay, such as unpaid rent or daily fines accruing.

I determined the circumstances leading to the landlord's failure to attend the hearing were within the landlord's control. The landlord was required by both the Rule 3 of the Residential Tenancy Branch Rules of Procedures and my interim decision to exchange all the evidence he was to rely upon, including the condition inspection report the agent says was not exchanged. Given that, I ruled that the hearing would proceed in accordance with rule 7.11.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?
Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. The kitchen in the rental unit was new. At the end of the tenancy, there was burn damage from a stove fire. The

landlord's agent didn't know the date that it happened. There was a subtenant who lived for 3 weeks in the rental unit with the tenant. The interaction between the subtenant and the tenant went bad and the subtenant had a cat who did damage to the rental unit and left behind cat fur which the landlord, VO is allergic to. The landlord's agent was unable to advise me when the subtenant was occupying the rental unit.

The landlord's agent testified he was present when the subtenant was leaving. He could not recall the date this happened. He was advised by the subtenant that she had stayed there for 3 weeks and that she had to move out as she didn't feel safe there anymore. The landlord's agent confirmed with the subtenant that she had a cat. The landlord's agent further testified he was asked to call the police for the subtenant because she felt afraid for her personal safety. The landlord's agent testified he was hesitant to get involved with the subtenant and the tenant. The subtenant was not called by the landlord as a witness.

The landlord's agent testified that he thinks a condition inspection report was completed with the tenant upon move in and move out. His father has the document and repeatedly asked for an adjournment so he can provide it for my reference. During the hearing, the landlord's agent did not direct my attention to any specific documents supplied as evidence by the landlord to corroborate his claim.

The tenant provided the following testimony. He helped out a friend and let her stay in the rental unit for 3 days. The friend showed up with a cat but he immediately he got rid of the guest's cat within 3 to 4 hours of the cat's arrival.

The tenant testified there was no condition inspection report done with him at the commencement of the tenancy, nor was one done at the end. He was not provided with the opportunity to participate in a condition inspection report at any time.

Analysis

Residential Tenancy Branch Rules of Procedure Rules 3.7, 7.4 and 7.17 state as follow:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible… To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

7.17 Presentation of evidence at the hearing

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

The landlord's letter dated October 3rd asked that I review the landlord's documentary evidence without being presented at the hearing. For me to do so would be contrary to sections 7.4 and 7.17 of the Rules of Procedure. In accordance with section 7.4, only those documents referred to me by the landlord's agent during the hearing were considered in this decision.

At the outset, I found the testimony provided by the landlord's agent to be vague and disjointed. The landlord didn't provide any insight into the relevance of the subtenant to whether there was damage sustained to the rental unit at the end of the tenancy. The landlord's agent also did not provide any background reference as to the subtenant's period of occupancy or whether there was any agreement between the landlord and tenant regarding the ability to have a subtenant. The relevance of the subtenant remains a question for me, as does the brief mention of the 'stove fire', date unknown.

Second, the landlord's agent did not refer me to any of the documents that were supplied by the landlord for this hearing. I had difficulty in following the rationale for the landlord's claim as the landlord's agent focussed his testimony on the relationship between the tenant and the subtenant. Although the cat was brought up during the hearing, only a vague reference to the landlord VO's allergy to cats was mentioned by the landlord's agent.

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. A condition inspection report provides the parties and the arbitrator with an idea of the state of the rental unit at the commencement and end of the tenancy and allows the parties and the arbitrator to determine the difference between the two. No condition inspection report signed by the parties at the beginning and end of the tenancy was produced for this hearing. Without this document, proving

there is a difference in the two conditions and thereby proving there was damage sustained to the rental unit is difficult for the landlord.

Section 7 says 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. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Rule 6.6 indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

No condition inspection report was produced to corroborate the condition of the rental unit when the tenant moved in, as compared to the condition at the end. The landlord's agent did not direct me to any of the documents to corroborate the existence of any damage and gave insufficient allegations of the tenant violating the *Act* or tenancy agreement. No testimony was presented regarding the value of the perceived damage and what, if any steps were taken to mitigate the landlord's losses. I find that the landlord has not provided sufficient proof to satisfy me that there was damage sustained to the rental unit. The landlord's claim is therefore dismissed.

As the landlord's application was not successful, the landlord is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The landlord's claim 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: November 27, 2019

Residential Tenancy Branch