Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for outstanding rent;
- Compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, and the Agent for the Landlord (the "Agent"), both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant acknowledged service of the Notice of Dispute Resolution Proceeding Package and both parties agreed that the evidence before me for consideration had been exchanged and agreed to its acceptance for consideration in this matter.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

In this hearing the Landlord sought recovery of November 2018 rent, however, in a previous decision rendered by an arbitrator with the Residential Tenancy Branch (the "Branch") on April 1, 2020, in relation to these parties and this tenancy, the arbitrator found that the Tenant's rent was $1,700.00 and that they were subsequently entitled to

a $150.00 rent refund for November 2018, as the Tenant had paid $1,850.00 instead of the required $1,700.00.

In the hearing the Agent argued that the matter of whether rent was actually paid for November 2018, was not at issue in the previous hearing as it was only about whether the rent increases instituted by the Landlord were lawful. I disagree. I have read the decision from the previous arbitrator as it was provided by the Tenant in relation to this hearing. In that decision the arbitrator stated that the matters before them for consideration related to both a dispute of a rent increase and the Tenant's request for a monetary order for money owed or compensation for damage or loss in relation to overpaid rent. In the decision the arbitrator made a finding on both matters, stating that the rent increases were ineffective as they were not made in accordance with the *Act*, that rent therefore remained at $1,700.00, and that the Tenant was entitled a refund of $150.00 in over paid rent per month for 8 months from October 1, 2018 to May 31, 2019.

Although the arbitrator did not explicitly state that they found that the Tenant had paid $1,850.00 in rent for November 2018, I find that the matter of rent payment for November 2018 was squarely before the arbitrator for consideration in the hearing and a plain and common sense reading of the decision makes it clear to me that they found that the Tenant paid rent in the amount of $1,850.00 for November 2018, as they awarded the Tenant a $150.00 rent refund for that month.

As a result of the above, I find that the matter of November 2018 rent has previously been decided by an arbitrator with the Branch who properly had that matter before them for consideration and that the matter is therefore res judicata, meaning that it has already been decided and therefore cannot be further pursued here by the same parties.

The Agent argued that the Landlord did not properly understand that the matter of November 2018 rent was at issue in the previous hearing and that I should therefore reconsider the matter in this hearing. As stated above, the matter of November 2018 rent has previously been decided and cannot be further pursued before me. As a result, I declined the Agent's request and I dismiss the Landlords' claim for outstanding November 2018 rent without leave to reapply as the matter is res judicata.

Issue(s) to be Decided

Is the Landlord entitled to $144.90 in compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that repairs were required to several toilets in the rental unit and that the Tenant contacted the property rental agency on September 13, 2019, for the purpose of notifying them of the plumbing issues. The parties agree that the plumbing issues have since been solved but the Agent stated that arrangements were made for their regular plumbing contractor to contact the Tenant in order to arrange a time for a service call, that three service calls were arranged by the Tenant, and that the Tenant failed to attend all three of these service calls, resulting in two call-out fee's and an administration fee totalling $144.90. In support of their testimony the Agent pointed to a letter from the plumbing company outlining the service requests, appointment arrangements made, and attempts to provide service, as well as an invoice for the missed service calls.

The Tenant denied having ever arranged the first two service calls, stating that when they were contacted by the plumbing company on September 13, 2019, they explicitly told them that they were leaving town for work and would not be available. The Tenant stated that they advised the plumbing company that they would contact them to make appointment arrangements when they returned, and that they should therefore not be responsible for paying the missed service call fee for a missed appointment they never booked during a time when they were out of the province. In support of their testimony the Tenant pointed to phone records showing they were out of town on the dates of the first two service calls. Although the Tenant acknowledged responsibility for missing one appointment on November 21, 2019, they stated that they should not be responsible for this service call fee as the Landlord inappropriately charged them a $50.00 NSF fee and therefore these fees should cancel each other out.

Analysis

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The parties agreed that repairs were required to several toilets in the rental unit and that the Landlord or their Agents contacted a plumbing agency for the purpose of completing these repairs. There was no disagreement that the Landlord paid the plumbing company to attend the rental unit on several occasions for service calls where the Tenant was subsequently unavailable and access to the rental unit was therefore not granted.

The Agent argued that the Tenant booked these appointments directly with the plumbing company themselves and should therefore be obligated to reimburse the Landlord for these missed appointment fees. The Tenant disagreed. Although the Landlord submitted a statement from the plumbing company stating that the Tenant had booked and missed three appointments, resulting in two missed service call fee's totalling $144.90, the Tenant submitted phone records showing they were out of the province for two of the calls and argued that the company attended the rental unit on two occasions without their consent. Given the conflicting and equally compelling testimony and documentary evidence from the parties, I am not satisfied that the Tenant in fact booked the first two plumbing appointments. As a result, I am not satisfied that the Landlord is entitled to any compensation associated with them.

However, the Tenant acknowledged booking and missing one appointment on November 21, 2019, and although they argued that they should not be responsible for the fee for missing this appointment as the Landlord had inappropriately charged them an NSF fee, I do not agree. Whether the Landlord charged them an NSF fee is entirely unrelated to whether they booked and then subsequently missed a plumbing appointment costing the Landlord $63.00 ($60.00 plus GST).

Section 32 of the *Act* states that both tenants and landlords have an obligation to repair and maintain the rental property and I find that the Tenant breached that requirement when they scheduled a plumbing appointment for November 21, 2019, and failed to attend, resulting in a $63.00 charge subsequently paid for by the Landlord. Pursuant to sections 7 and 32 of the *Act*, I therefore find that the Tenant is responsible to reimburse the Landlord for the $63.00 missed service call fee associated with November 21, 2019 appointment. As I have already dismissed the Landlord's claim to be reimbursed for the other missed service call fee shown on the invoice, I decline to grant the Landlord the full administration fee. Instead, I grant the Landlord $9.45, which represents 50% of the $18.90 administrative fee.

Pursuant to section 72 of the *Act*, I grant the Landlord recovery of the $100.00 filing fee. As a result, and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of $172.45.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $172.45. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: May 4, 2020

Residential Tenancy Branch