Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL, OLC, LRE, CNQ-MT, FFT, MNDCT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- an order of possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' for:

- cancellation of the landlord's Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the "**Notice**") pursuant to section 49.1;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $450 pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant CB attended the hearing on behalf of both tenants. The landlord attended the hearing on his own behalf. Both were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

CB testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified that he did not serve the tenants with his notice for dispute resolution form or supporting evidence, as the tenants moved out of the rental unit prior to this hearing (I will address this shortly). I find that the landlord has been served with the required documents in accordance with the Act.

Preliminary Issue – Effect of the Tenants Moving Out of the Rental Unit

The tenants vacated the rental unit on April 5, 2020 (less than two weeks after filing their notice of dispute resolution proceeding form). Accordingly, pursuant to section 44 (1)(d), the tenancy has ended.

As such, the landlord no longer requires the relief sought in his application. Additionally, the issue of the validity of the Notice is moot, as, even if it is invalid, the tenancy has ended. Similarly, as the tenancy has ended, the tenants no longer require orders restricting the landlord's access to the rental unit or for the landlord to comply with the Act. The tenant's claim for monetary compensation remains unresolved, however.

As such, I dismiss the landlord's claim in its entirety. I dismiss all portions of the tenant's application except his claim for recovery of the filing fee and for a monetary order.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order of $450;
2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2015. Monthly rent was $900 and was payable on the first of each month. The tenant paid the landlord a security deposit of $450, which the landlord continues to hold in trust for the tenant.

The tenants vacated the rental unit on April 5, 2020. The parties (or their agents) conducted a move-out condition inspection report (the "**Report**") on that same date. The tenants wrote their forwarding address on the Report and provided it to the landlord.

To date, the landlord has not returned any part of the security deposit. The landlord testified that he has not returned the security deposit as the tenants were obligated to pay rent for the month of April 2020 but did not. Additionally, he testified that after the tenants moved out, he discovered damage to the plumbing in the rental unit, and that he intends to bring make a claim against the tenants to recover the cost of repairing this damage. However, he has not yet made any claim against the tenants for unpaid rent or for damage to the rental unit.

Analysis

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the parties, I find that the tenancy ended on April 5, 2020 and that the tenants provided their forwarding address in writing to the landlord on that same day.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlord to allege the tenants caused damage to the rental unit or are in rental arrears. He must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that he has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenants double the amount of the security deposit ($900).

Despite the fact that the tenants have been successful in their application, I decline to order that the landlord reimburse them their filing fee. I find that by refusing to move out per the Notice (indicated that they filed their application to dispute the Notice), the landlord felt compelled to file his application for an order of possession. Three days after the landlord filed his application, the tenants moved out. I find that this conduct caused the landlord to unnecessarily incur the cost of filing his application. As such, the tenants are not entitled to recover theirs.

Conclusion

Pursuant to sections 62 of the Act, I order that the landlord pay the tenants $900.

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 15, 2020

Residential Tenancy Branch