Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On December 17, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*"), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlord G.R. attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to each Landlord by registered mail on December 19, 2019 and G.R. confirmed that she received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

G.R. stated that both Landlords moved from the property, in October 2019, to separate addresses but neither of them advised the Tenant of their new address. She had her mail forwarded and this is how she received the Notice of Hearing package, but Landlord A.T. did not receive the package as he did not have his mail forwarded to his address. It is her belief that despite not receiving this package, Landlord A.T. should still be considered a Respondent to this Application. When reviewing the registered mail tracking history, (the registered mail tracking numbers are noted on the first page of this Decision) I find it important to note that the package delivered to A.T. was returned to the Tenant as unclaimed. As neither Landlord advised the Tenant of their new address, there was no way for her to know that A.T. did not simply refuse to claim this package. As a result, I am satisfied that he was deemed to have received this package five days after it was mailed, and I accept that he would be a Respondent to this hearing. I also

note that as the Landlords have sold the property and no longer live there, this address will no longer be a suitable address for service of documents.

The Tenant advised that she did not serve her evidence to the Landlords prior to the hearing. As a result, the evidence submitted to the Residential Tenancy Branch was excluded and was not considered when rendering this Decision. However, the Tenant was allowed to speak to this evidence during the hearing.

The Landlord advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit and pet damage deposit?
- Is the Tenant entitled to a monetary award for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 15, 2019 and ended when the Tenant gave up vacant possession of the rental unit on October 15, 2019. Rent was established at $2,000.00 per month and was due on the first day of each month. While a security deposit of $1,000.00 and a pet damage deposit of $1,000.00 was noted as being paid on the tenancy agreement, no actual money was exchanged. As the rental unit did not have a kitchen, the parties had a verbal agreement that the Tenant would install a kitchen up to a value of $2,000.00, in lieu of paying the deposits. A copy of the signed tenancy agreement was submitted as documentary evidence.
The Tenant advised that the Landlord had been working for her, and the Tenant stated that she gave the Landlord a business card of hers in September 2019 that contained her address for service. She claimed that this was her provision of her forwarding

address in writing. She stated that she “assumed” that the Landlord knew that this was her forwarding address; however, she does not recall if she ever told the Landlord specifically that this was her forwarding address that should be used for service.

The Landlord advised that she was not sure if she received this business card, and if she did get this card, she was not sure if this was supposed to be a service address for the Tenant because she was not specifically advised of such.

The Tenant was seeking compensation in the amount of **$1,048.86** for the return of the remaining balance of her security deposit and pet damage deposit. She stated that when she moved into the rental unit, there was no kitchen. So, as opposed to paying a security deposit and pet damage deposit, she had a verbal agreement with the Landlord that she would install a kitchen, up to the value of $2,000.00, in lieu of paying these deposits. She stated that she spent over $2,000.00 on materials, as per their agreement, and installed 90% of a kitchen. Thus, she is seeking a return of the balance of her deposits, less the half month of rent that she owes for the days she occupied the rental unit in October.

The Landlord confirmed that they did have this verbal agreement that the Tenant would install a kitchen, up to the value of $2,000.00, in lieu of paying these deposits. However, she stated that there were many deficiencies in the construction of the kitchen that they had to fix. As a result, the value of the work completed did not satisfy the equivalent of the $2,000.00 that was owed. Furthermore, the Tenant gave verbal notice to end her tenancy, she vacated the rental unit on October 15, 2019, and she did not pay October 2019 rent at all. The Tenant requested that the Landlord take this half month’s rent from the amount of her security deposit and pet damage deposit.

The Tenant was also seeking compensation in the amount of **$250.00** for the replacement of her damaged boxspring. She stated that when she moved into the rental unit, the Landlord conducted many renovations, which caused frequent leaks into the rental unit. She stated that one leak, prior to July 2019, was so significant that it came through the walls and soaked her two-year-old boxspring that was on the floor. She stated that she cleaned up the water right away and that she advised the Landlord of this issue. As she did not have any room to move this boxspring anywhere, she simply left it on the floor where it developed mould. She eventually threw this boxspring out as it was damaged so badly by the development of the mould.
The Landlord acknowledged that there were multiple leaks during the tenancy and that they would fix the leaks as soon as they were informed of them. She confirmed that one leak soaked the Tenant’s boxspring; however, she advised that the Tenant did not have

this boxspring elevated off the ground prior to the leak nor subsequent to the leak. She stated that the Tenant continued to use the boxspring as normal after the leak soaked it.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenant's request for the return of her security deposit and pet damage deposit, pursuant to Section 38 of the *Act*, the Tenant must first provide her forwarding address in writing to the Landlord and the Landlord must then deal with the deposits, in accordance with this Section of the *Act*, within 15 days of receiving this forwarding address. If the Landlord does not deal with the deposits accordingly within 15 days of receiving the forwarding address in writing, the Tenant can then apply for double the deposits, pursuant to the *Act*.

While the Tenant claimed that she provided her business card as her forwarding address in writing to the Landlord, she was not sure if she had specifically advised the Landlord that this was provided for the purpose of being used as her forwarding address once the tenancy ended. Even though the Landlord acknowledged receiving this business card, there is insufficient evidence from either party that she would have known this card was provided for this purpose. While the Landlord may have worked for the Tenant for some time and it would have been strange to have received a business card, I am not satisfied that this would be enough to accept that the Tenant had provided this card as a forwarding address in writing.

Regardless, there was also a dispute with the actual amount that was paid by the Tenant for the security deposit and pet damage deposit. I find it important to note that the *Act* defines a security deposit as "money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property" and a pet damage deposit as "money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet." While not commonly practiced, these definitions do mean that the verbal agreement of the installation of a kitchen can be accepted in lieu of paying a security deposit and pet damage deposit. However, when this is done, there often can be a dispute over whether or not the value of the service in exchange for the deposits was sufficient, which is exactly what has happened here.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find that the consistent and undisputed evidence is that a kitchen was never completely installed. As the burden of proof is on the Tenant to prove her claims, and as she has provided insufficient evidence to substantiate the value of the materials purchased, I am not satisfied that she has established her claim. As such, I dismiss it in its entirety.

With respect to the Tenant's claims for damages for the damaged boxspring, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding this claim for the damaged boxspring, the consistent and undisputed evidence is that there were frequent leaks in the rental unit, and this was as a result of the Landlord's actions. Furthermore, as a result of these floods, on one occasion the water leak soaked the Tenant's boxspring. As a result, I am satisfied that the Landlord's negligence caused the Tenant to suffer a loss due to damage to her boxspring. However, I find it important to note that while the Tenant did clean up the water, she did not act reasonably to minimize any damage or loss to the boxspring as she simply left it directly on the ground and unable to dry sufficiently. While she may not have had any room to move it, she made no efforts to prop this boxspring up or get it off the ground to sufficiently mitigate the damage and let it dry out. Consequently, I am satisfied from the evidence provided that the Tenant has suffered a loss, but that loss is reduced because of her inaction to minimize that loss. As a result, I grant the Tenant a monetary award in the amount of **$50.00** only.

As the Tenant was partially successful in this Application, I find that she is entitled to recover **$50.00** of the $100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Costs associated with the damaged boxspring	$50.00
Filing fee	$50.00
TOTAL MONETARY AWARD	**$100.00**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

The Tenant's Application with respect to the return of the security and pet damage deposit 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: May 29, 2020

Residential Tenancy Branch