Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a monetary order for $2,600 representing two times the amount of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,323 pursuant to section 67.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:53 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. Tenant TS attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that TS and I were the only ones who had called into this teleconference.

Preliminary Issue – Service

The tenancy agreement states that the corporate landlord ("**SC Ltd**") is a landlord as agent for the owner of the rental unit. The owner is not named on the tenancy agreement. The rental unit was administered by SC Ltd during the tenancy.

TS testified that she served SC Ltd's property manager with the notice of dispute resolution form and supporting evidence package personally on December 24, 2019. At this time, the property manager advised the tenant that SC Ltd no longer worked with the owner.

The tenant attempted unsuccessfully to serve the owner with the notice of dispute resolution form and supporting evidence package.

Section 1 of the Act defines landlord:

"**landlord**", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find that SC Ltd meets this definition and is a landlord for the purposes of the Act, as it administered the tenancy and as it was named the landlord on the tenancy agreement.

Section 89 of the Act permits service on a landlord by leaving a copy of the documents being served with an agent of the landlord. I find that the property manager is an agent of the landlord.

Accordingly, I find that the landlord, SC Ltd, has been served with the required documents in accordance with the Act.

Issues to be Decided

Are the tenants entitled to a monetary order of $3,923?

Background and Evidence

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

The parties entered into a written tenancy agreement starting February 1, 2018. Monthly rent was $1,600 at the start of the tenancy and was then raised to $1,641 in accordance with the Act. The tenants paid the landlord a security deposit of $800 and a pet damage deposit of $500 (the "**Deposits**"). TS testified that the landlord returned $1,195 of the Deposits on January 23, 2020, and that the tenants agreed the landlord could keep $105 of the Deposits.

The tenants moved out of the rental unit on September 30, 2019. They provided their forwarding address in writing to the landlord on that same date.

TS testified that the rental unit flooded three times during the tenancy. She testified that on July 5, 2020, the rental unit experienced the third flood, which was severe flood. She testified that part of the rental unit was flooded with sewage. She testified that she contacted the property manager immediately, and the landlord sent a remediation company to the rental unit the following day.

TS testified that the remediation company removed all the flooring and drywall from the master bedroom, the hallway, and the laundry room on July 6, 2019, and set up dehumidifiers. TS estimated that the damaged areas represent between 33% and 50% of the total square footage of the rental unit.

She testified that she and her husband had to move into one of the two other smaller bedrooms of the rental unit.

TS testified that the remediation company removed the dehumidifiers on July 9, 2019, at the direction of the owner. She testified that no further repair work was done to the rental unit after this date, and that the affected areas smelled of sewage and were unusable due to the smell and lack of drywall and flooring. She testified that the tenants "barricaded" this area off to try to keep the smell out of the rest of the rental unit.

On July 29, 2019, the landlord issued a two month notice to end tenancy for landlord's use. The tenants vacated the rental unit in accordance with this order.

On August 1, 2019, the tenants wrote the landlord demanding that the repairs be completed by August 16, 2019. The landlord did not respond. The repairs were not completed.

The tenants claim a retroactive rent reduction of $441 per month for three months as compensation for being unable to use the damaged portions of the rental unit. She claims this amount on the basis that a neighboring unit which does not include a master bedroom, laundry room, or hallway (that is, is the same size as the undamaged portion of the rental unit) is rented out for $1,200 per month. The tenants did not submit any documentary evidence in corroboration of this, and TS testified that she did not have the phone number of the occupant of the neighboring unit, and due to the ongoing COVID pandemic, did not want to go to the neighbor's house personally to ask him for his contact information.

Analysis

1. The Deposits

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
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> (a) the date the tenancy ends, and
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> (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 TS, I find that the tenancy ended on September 30, 2019 and that the tenants provided their forwarding address in writing to the landlord on that same date.

I find that the landlord did not return the Deposit to the tenants or make a claim against the Deposits within 15 days of receiving the tenants' forwarding address.

I find that the tenants consented to the landlord retain $105 of the Deposits, and that the landlord returned $1,195 of the Deposits to the tenant on January 23, 2020.

Section 38(4) of the Act states:

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
> > (a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,

I find that the landlord did not comply with its obligations under section 38(1) of the Act. It is not enough that the landlord returned the Deposits eventually. In order not to have breached section 38(1) of the Act, the landlord needed to return the Deposits within 15 days of the receiving the tenants' forwarding address (that is, by October 15, 2020). It did not.

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. Policy Guideline 17 discussed how to calculate payments pursuant to section 38(6) in instances where the tenants have consented to the landlord retaining part of the deposit. It states:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

[…]

• Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization. The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $350 ($400 - $100 = $300 x 2 = $600 less amount actually returned $250).

While not a direct analogue, this example is instructive as to how to treat the facts in the present application. The landlord must pay the tenants $1,195 ($1,300 - $105 = $1,195; $1,195 x 2 = $2,390; $2,390 - $1,195 = $1,195).

2. Retroactive rent reduction

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the undisputed evidence of the tenants, I find that the landlord breached this section of the Act by failing to repair the areas of the rental unit damaged by the flood. I find that these areas were unhabitable from July 5, 2019 to September 30, 2019 (approximately three months), due to these areas having no flooring or drywall and smelling of sewage.

I find that the tenants lost the use of these areas and are entitled to compensation accordingly. I accept the tenants' valuation of their loss ($441 per month). However, I do not accept this valuation for the reasons provided by the tenants, as I have no evidence of the market rate for a rental unit lacking a laundry room, master bedroom, and connecting hallway.

Rather, I find that a rent reduction of approximately 27% is an appropriate reduction due to the loss of between 33% and 50% of the rental unit's square footage and the loss of access to the rental unit's laundry room, an important amenity.

I find that the tenants reasonably minimized their damage by notifying the landlord of the flood on July 5, 2019, by “barricading” the damaged areas of the rental unit to block the smell of sewage from the rest of the rental unit, and by demanding that the repairs be completed on August 1, 2019.

Accordingly, I order the landlord to pay the tenants $1,323.

Conclusion

Pursuant to sections 62 and 67 of the Act, I order that the landlord pay the tenants $2,518, representing the following:

Rent reduction	$1,323
x2 security deposit	$2,390
Credit for returned security deposit	-$1,195
Total	**$2,518**

I order the tenants to serve the landlord with a copy of this decision and accompanying monetary order immediately upon its receipt.

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 25, 2020

Residential Tenancy Branch