Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDCT

Introduction

In this dispute, the tenant seeks (1) the return of her security deposit of $450.00, and (2) compensation related to various alleged breaches of the Act by the landlord, for which she claims $450.00, both claims pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the "Act").

The tenant filed an application for dispute resolution on June 22, 2020 and a dispute resolution hearing was held on October 9, 2020. The landlord and the tenant attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application. As such, not all of the parties' testimonies will necessarily be reproduced within this decision.

Issues

1. Is the tenant entitled to the return of her security deposit?
2. Is the tenant entitled to compensation for breaches of the Act by the landlord?

Background and Evidence

At the outset, it cannot be overemphasized that the relationship of the parties is anything but acrid. Both parties accused the other of fabrication, lies, and distortions of the truth. However, at the end of the day, it must be emphasized that allegations and claims must be supported by evidence.

Rough was the start of this tenancy, the tenant testified. Moving into the rental unit on January 1, 2020, she immediately became aware of a few issues, including a beeping, inoperable carbon monoxide detector. This was on the very first night that she moved in. She tried calling the landlord to have him look at the detector, but to no avail. “It was a terrible greeting,” she remarked. In addition, the tenant testified that the landlord had left the incorrect key to the rental unit, and there were no instructions on how to use the rental unit’s induction burner. (There was no stove in the rental unit.)

There were other issues during the three-month tenancy (the tenancy ended on April 1, 2020) of which the tenant spoke, and which gave rise to the tenant’s claim for compensation. The tenant described herself as an 82-year-old woman who is vegetarian, does not drink, and does not smoke. Over the course of the tenancy the landlord “basically hounded me” and “lied about everything.” There was an inoperable fire extinguisher which the landlord did not bother fixing. The landlord “argued and argued” about an exterior light which did not work. Then the light was fixed but the landlord and tenant disagreed about its use. The landlord allegedly hid the ice melt, so that water from a drainpipe created a “skating rink,” posing a risk to the tenant. In addition, the tenant testified that the landlord had returned her mail to BC Housing without her consent. The landlord harassed the tenant about the use of the laundry. Finally, she testified that called the police a total five times.

In summary, the tenant testified that she was subjected to “on and on, absolute harassment,” she experienced “terrible stress,” and, that “that’s the way he treated me [. . .] like a dog.” And, that her experience in interactions during the tenancy was “nothing but absolute torture.” Submitted into evidence were the tenant’s lengthy handwritten description of these, and other, events, that occurred during the tenancy.

At the end or immediately prior to the end of the tenancy, the landlord said that he would return the tenant’s $450.00 security deposit. However, the tenant said that “I’ve not received a dime” and that the landlord has not followed up with her about the deposit.

I asked the tenant about when and how she provided her forwarding address, in writing, to the landlord. The tenant was rather argumentative with what was a simple question, responding twice that “it was all there in the material” that she submitted into evidence. The tenant then began to testify about the above-noted issues, to which I again asked the tenant when and how she provided the forwarding address to the landlord. She then testified that it was by registered mail sometime between April 1 to April 12, 2020.

The tenant submitted into evidence a copy of Tenant's Notice of Forwarding Address for the Return of the Security and/or Pet Damage Deposit, which was date stamped at Shopper's Drug Mart on April 16, 2020. Also included with this was a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit, also date stamped on April 16, 2020. Finally, the tenant submitted into evidence a copy of a Canada Post "Track a Package Printout" which included the registered mail tracking number and on which document it indicates that the notice of forwarding address was delivered to the landlord's address for service (which, it turns out, is the same address as the rental unit) on April 20, 2020 at 11:10 AM.

"Just because the tenant makes a statement doesn't make it true," opened the landlord. He did not contest the fact that police had attended five times. After lengthy conversations that the police had with the tenant, though, nothing came of any police visit. The police never chastised or charged the landlord with anything, and the police apparently remarked to the landlord that the tenant was either paranoid or suffering from dementia. Moreover, he explained that the police would not get further involved in the dispute because they lacked jurisdiction and that it was a civil mater. There was no threats and no intimidation at any time, he said.

The tenant was "a rather hysterical individual" and that (as purportedly said by the police) "she lacked the cognitive ability to understand the issues." As to the specific incident involving the mail unfolded as follows: the landlord had some mail for the tenant, so he went to her door and knocked on the door. No answer. He knocked twice, at which point the tenant briefly opened the door, he handed her the mail, and the door was shut. No words were exchanged. The tenant then called the police, alleging that the landlord had attempted to break and enter the rental unit. "All I did was knock on her door . . . I did nothing wrong," the landlord remarked.

Regarding the security deposit, the landlord testified that he withheld the deposit to compensate for April's rent. (There was much testimony from both parties as to whether the tenant provided proper notice to end the tenancy. However, whether the tenant ended the tenancy in accordance with the Act, or, whether the landlord's notice to end the tenancy in his correspondence of January 2020 complied with the Act, is irrelevant to the issues of this dispute. I will explain this further, below.)

Contrary to the tenant's testimony that she sent her forwarding address to the landlord by registered mail in early April, the landlord disputed this. He said that he did not receive her forwarding address until the tenant filed her application for dispute resolution: "this was the first time I had any idea of her forwarding address."

In closing submissions, the landlord argued that “if even 5% [of the claims were] true, I’d be doing time.” There is, he added, zero rationale for the behavior that the tenant claims to have occurred. He had almost no contact with the tenant between January 31, and April 31, 2020, and rhetorically asked, “when [did] all this horrific behavior take place?” Indeed, the landlord said that he was under stress, and that “I had trouble sleeping because I didn’t know if she’d burn the house down.” Finally, he opined that the tenant is “not playing with a full deck of cards.”

In her brief rebuttal and closing, the tenant remarked that “I know he’s a liar,” but that it is far more extreme than she would have imagined. She added, “I’m not delusional and I’m not stupid.”

During the last few minutes of the hearing, the parties’ submissions and interactions began rapidly deteriorating, with the landlord frequently interrupting the tenant and at which point I ended the hearing. I then explained to the parties what they could expect next, in terms of receiving the decision and so forth. At 2:20 PM the hearing ended.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for Compensation for Breach of Act

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the tenant alleges that the landlord subjected her to harassment, bullying, lying, and, as she summarized, “nothing but absolute torture.” If any of the specific incidents described occurred, they might give rise to a compensable breach under section 28 of the Act, which states that

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

However, while the tenant claims to have been subjected to “absolute harassment” that continued “on and on” throughout the tenancy, there is a complete dearth of any evidence – beyond the tenant’s oral testimony – to support her claim. As the landlord correctly pointed out, just because one makes a statement does not make it true.

When two parties to a dispute provide equally reasonable 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 this case, I find that the tenant has failed to provide any evidence over and above her testimony that the landlord breached any section of the Act that would lead to compensation under the Act. (Certainly, the landlord may or may not have breached the Act in regards to his giving notice to end the tenancy; however, the tenant gave the landlord two weeks' notice to end the tenancy, so any alleged breach by the landlord on ending the tenancy is irrelevant insofar as this claim is concerned.)

There is no documentary evidence provided by the tenant that supports any aspect of her argument that she was harassed or bullied. No written correspondence between the parties. No third-party witnesses. And, in the absence of any such supporting evidence, and where the parties are at complete odds as to the description of events, I cannot find that the tenant has proven her claim. Finally, it should be noted both parties accused the other of lying, so I cannot and do not make any findings in respect of their credibility. The parties both presented as articulate and, for the most part, relatively straightforward in giving testimony.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation on this aspect of her application. Accordingly, her claim is dismissed without leave to reapply.

2. Claim for Return of Security Deposit

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> 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.

In this dispute, the tenancy ended on April 1, 2020. The tenant testified that she provided her forwarding address in writing to the landlord by way of Canada Post registered mail. Though she appears to be a bit off in terms of dates (she said that it was sent sometime between April 1-12, 2020, whereas the registered mail documentary evidence points to a mailing date of April 16, 2020), I find that the Canada Post registered mail documentation, along with the tenant's notice of forwarding address, to be a preponderance of evidence supporting the tenant's claim that she provided her forwarding address to the landlord on or about April 16, 2020. The landlord received this notice and the tenant's forwarding address on April 20, 2020.

While the landlord denies having received the tenant's forwarding address until he received the Notice of Dispute Resolution Proceeding package in June 2020, I am not persuaded by his claim that he did. The documentary evidence proves that the landlord received the tenant's forwarding address within weeks of the tenancy ending.

Given the above, the landlord was required to either repay the tenant her $450.00 security deposit by May 5, 2020, or, make an application for dispute resolution with the Residential Tenancy Branch claiming against the security deposit. He did neither.

Doubling of Security Deposit

I must now turn to section 38(6) of the Act which states that

> (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.

Here, as the landlord did not comply with subsection 38(1) of the Act, I order that the landlord must pay the tenant double the amount of the security deposit in the amount of $900.00.

The tenant is granted a monetary award in the amount of $900.00 in respect of her claim for the return of the security deposit. To this end, a monetary order in the amount of $900.00 is issued, in conjunction with this Decision, to the tenant.

Conclusion

I hereby grant the tenant's application, in part.

I grant the tenant a monetary order in the amount of $900.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 13, 2020

Residential Tenancy Branch