Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed their Application for Dispute Resolution (the "Application") on June 15, 2020. They seek compensation for monetary loss or other money owed, as well as reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 5, 2020.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Both parties confirmed they received the prepared documentary evidence of the other in advance of the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement that both parties signed on July 1, 2019. The tenancy started on that day. The agreement shows the rent amount of $850.00 per month on the first of each mont. The tenants paid a security deposit for $425.00 and a pet damage deposit of $425.00.

The tenancy ended on June 1, 2020 when the tenant left the unit. Prior to this, the landlords served a 'Two Month Notice to End Tenancy for landlord's Use of Property' (the "Two-Month Notice") on February 15, 2020. This specified the move-out date of April 30, 2020. By that date, the tenant did not finalize a plan and communication between the parties became strained. The evidence consisting of text messages and emails shows that the landlords tried to ascertain the tenant's capability of moving out on that set date.

The tenant paid rent for the month of May 2020. Evidence for this shows messaging between the parties on that date. The landlord stated: "Your lack of communication doesn't justify you squatting on my property." The tenant responded: "As previously mentioned, I am unable to find a place during these times."

The tenant presented that the hot water in the unit went down on May 2, 2020. This resulted in no response from the landlords – as the tenant referred to this as "attempt for acknowledgement" via text message – and the tenant called the RCMP. The RCMP located the landlords, and via this channel the tenant was able to learn that the landlords had difficulty contacting a plumber "due to covid-19". In their email to the landlords on May 3, 2020 they stated: "this makes me believe it was a deliberate action on your part." By May 5, the landlords communicated back to the tenant that they made arrangement for a new hot water tank.

By May 4, the landlords messaged the tenant to say: "If your [*sic*] off our property for may 15th I am willing to pay/cover your first months rent at your new place (maximum of $1500)." They stated the other option is to hire a bailiff company that same week to "physically remove [the tenant] and [their] belongs [*sic*] from the property." The tenant submitted they had made attempts for May 15, 2020, then aimed for June 1, 2020.

For their claim of monetary compensation, the tenant presented a list of events for the month of May. This includes: garbage scattered on the property (May 11); their pet cat going missing (May 13); a notice of dispute resolution from the landlords (May 14); ambush by two women who asked about vacancy (May 18); portions of a tree left in their parking spot (May 19); the mail box lock changed (May 20).

To quantify their claim, the tenant submitted the following: "The constant harassment from both [the landlords] left me feeling extremely targeted." Further: "These actions have had a serious impact on my mental health, causing loss of sleep, loss of appetite, sever [*sic*] anxiety and depression." On a monetary worksheet, they stated this was "loss of enjoyment of life". On their submitted copy, the tenant did not provide a

monetary amount of list the details of their claim. They provided video and photos of specific points they described in their submissions.

The landlords filed for dispute resolution on May 14 seeking an order of possession and recovery of rent for the month of May. That application was dismissed by the Arbitrator on June 15, 2020 when the landlords did not attend. That same day, the tenant notified the landlords of their forwarding address for the "forward [of their] pet and damage deposit".

On the subject of the previous hearing, the landlords stated they cancelled that hearing. By that time, the May rent was paid, and the tenant had moved out. In this current hearing, the landlords stated: "there was no return of deposits."

The claim amount, as it appears on their Application, is $970 in total, this is "monetary compensation for the month of May 2020. Due to the constant harassment and property neglect. . ." In the hearing, the tenant stated they are looking for the return of the deposits.

In the hearing, the landlords described the end of tenancy from their point of view. They tried to arrange a walk-through inspection meeting on May 1; however, the tenant did not communicate back to them about this. Their chief concern was the "deliberate lack of communication" from the tenant throughout.

By May 12, the landlord enlisted legal counsel. That counsel generated a letter stating the tenant was "currently a trespasser" and gave the final vacate date of May 15, with "all legal means available at the time will be taken to force vacant possession."

The landlords maintained, based on their review of the video and photo material, that there is no established pattern of harassment as the tenant stated.

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

From the submissions of the landlord, I am satisfied that an agreement was in place between the landlord and tenant for the rental unit. The matters before me concern the end of tenancy.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The tenant here claims the rent amount for the month of May. This is from stress they attribute to the communication from the landlord. While it is clear that communication became strained, the tenant here has not demonstrated that a damage or loss exists. There is no description of their stress or anxiety. The evidence they present in the form of photos and video does not show significant intrusion that would amount to "loss of enjoyment of life" – which in any description is vague and non-specific. I find the claim to one month's rent amount – a significant amount – is not matched with any tangible evidence of the impact.

Further, the tenant did not provide an amount on their monetary order worksheet; therefore, the value of damage or loss is not established. This makes the claim for one month rent entirely arbitrary. Moreover, there is no evidence of conciliatory gestures by the tenant to mitigate the situation as it occurred. I make no award for this portion of the tenant's claim.

Insofar as there was a lack of hot water for what the evidence shows was a period of three days, the impact of this is not established. The tenant did not establish that this was a wilful or intentional act by the landlord.

Section 32 and 33 of the *Act* set out the landlord's obligations to repair and maintain standards, and emergency repairs. I find the landlord has established that they undertook high-priority repairs and fulfilled their obligations to repair and maintain standards. I find this was accomplished as needed within a reasonable amount of time. On this basis, I find there was no violation of the *Act*, regulations or tenancy agreement.

The Residential Tenancy Branch Rule of Procedure 4.2 allows for an amendment to the Application at the hearing. The tenant stated they wanted the return of the security and pet deposits – this matter remains unresolved after the end of the tenancy. In the hearing they provided that they gave their copy of their new forwarding address to the eviction company retained by the landlords previously, as well as emailing this information directly to the landlords. They provided a copy of the email they sent to the landlords directly on June 15, 2020.

By application of Rule 4.2 I accept the tenant's amendment. I find this was a circumstance they could reasonably anticipate after the carry-over of the prior hearing between these parties. They did provide evidence that speaks to this point directly.

Section 38(1) of the *Act* provides that a landlord must either repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

There was a prior hearing in which the landlords applied for a rental amount owing. Their Application specified they wished to hold the security and pet deposits toward this unpaid rent. The record shows the landlords cancelled this hearing. As a result, I find the landlords did not pursue a claim against those deposits. Nor did they repay the amounts to the tenant.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact the tenant gave their forwarding address to the landlord as provided for in their evidence. This was via email on June 15, 2020. The landlord did not apply for dispute resolution to claim against these deposits within 15 days of receiving that information.

By not returning the security and pet damage deposits, and not applying for dispute resolution on a claim against them, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the deposits, as per section 38(6) of the *Act*.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful on part of their claim, I find they are entitled to recover the filing fee from the landlords.

Conclusion

I order the landlords to pay the tenant the amount of $1,800.00 which includes: $1,700.00 for double the amount of the security and pet deposits and the $100.00 filing fee. I grant the tenant a monetary order for this amount. This order must be served on the landlords. Should the landlords fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 16, 2020

Residential Tenancy Branch