Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on January 30, 2020 seeking a monetary order for the return of the security and pet deposits they paid at the start of a past tenancy. Additionally, they applied for a return 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 June 19, 2020, followed by a decision on July 6, 2020. The hearing reconvened on discrete issues on October 6, 2020.

In each conference call hearing, I explained the process and offered the parties the opportunity to ask questions. I explained the need to reconvene in a written interim decision dated August 19, 2020.

At the hearing, I provided each party the opportunity to present oral testimony. An agent for the landlord attended the hearings and had the chance to respond and make submissions on the landlord's behalf. Both parties confirmed they received the prepared evidence of the other.

Preliminary Matters

Subsequent to the original decision in this matter, dated July 6, 2020, the tenant completed three 'Request for Correction' forms and one 'Request for Clarification'. In these, the tenant presented what they felt were flaws in the decision. These included the consideration of evidence provided by the landlord that was discussed at the initial hearing on June 19, 2020. In the second 'Request for Correction' they pointed to an individual piece of their own prepared documentary evidence that they prepared for the hearing, stating I overlooked this piece when assessing evidence in the decision.

In the interim the tenant also filed an 'Application for Review Consideration' on August 22, 2020. In this, they presented that the landlord provided their documentary evidence to the tenant on July 22, 2020, after the initial hearing. They provided this email message from the landlord in which the landlord stated: "Here is a sample from my unsent 23 page reply, for you to consider now."

Based on the July 15, 2020 decision of a separate Arbitrator on the tenant's request for review consideration, they filed a second application for this same purpose on July 23, 2020. A second separate Arbitrator delivered their reasons on that review on July 28, 2020.

Based on this information, I reconvened the hearing on October 6, 2020. This was to clarify certain aspects of the evidence presented by the parties in the initial June 19, 2020 hearing.

Based on the above set of factors, my original decision dated July 6, 2020 is set aside. This present decision is based on a consideration of further oral testimony of the parties, with reference made to the landlord's communication of July 22, 2020 – the evidence that was incorrectly referred to in my original July 6, 2020 decision, after informing the parties in the initial hearing that I would not consider that evidence.

The landlord disclosed pieces of this evidence to the tenant directly after the initial hearing. That being the case, I now consider the evidence herein. The tenant spoke to the evidence directly and referred to it in the reconvened hearing on October 6, 2020.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38(1)(c) of the Act?

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

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

Both the tenant and the landlord agreed to the terms of the tenancy agreement. The tenant submitted a copy of this agreement signed by both parties on October 2, 2014. The rent amount, not in dispute, was $1,468.00. The amount of the security deposit paid on October 2, 2014 was $734.00.

The tenant notified the landlord of their desire to move out at the end of November 2019 – this was for the end-of-tenancy date December 31, 2019. In the hearing the tenant stated they provided registered mail to the landlord on January 2, 2020 that had their forwarding address. They provided a copy of the Canada Post registered receipt to show this.

The addendum to the tenancy agreement provides that the landlord leaves it to the outgoing and incoming tenants to meet and review the condition of the unit. Their instruction to the incoming tenants is if they are not satisfied with the condition of the unit then they should not receive the key from the outgoing tenant. Also stated in the addendum: “remember to contact the landlord so [they] can check if all is well with the new tenant before [they give] you your security deposit back.”

The tenant claims the landlord did not return the security deposit within 15 days of move out and did not file for dispute resolution. The tenant here requests double that amount in line with the *Act*.

The tenant provided a separate submission setting out their interpretation of the legislation on the dispensation of the security deposit. They point to the provisions of the *Act* that set out the landlord’s duty to conduct a move-in inspection and a move-out inspection. They also state: “. . . the landlord failed to file for dispute resolution within 15 days of the end of the tenancy and/or receipt of the tenant’s forwarding address (both Dec 31, 2019).”

The landlord provided a detailed statement in their prepared evidence. They set out expenses for clean-up costs after the end of the tenancy. In the initial hearing, the landlord’s agent submitted that the landlord “waives their right to claim damage” against the security deposit. This is because the landlord did not meet with the tenant at neither the start nor the end of the tenancy to inspect the unit. Additionally, the landlord’s agent stated they did not dispute anything stated by the tenant about their entitlement to the security deposit.

On the Application, the tenant also claims $5,435.00. They completed a monetary worksheet on January 17, 2020 that shows the cable television amount of $2,170.00 and a garbage disposal amount of $3,265.00. The tenant highlighted a portion of the tenancy agreement to show “what is included in the rent”. This indicates “cable television never provided” and “garbage collection never provided”. This is the essence of the tenant’s claim for compensation.

In the initial hearing and the reconvened hearing, both the tenant and the landlord gave detail on this issue by reviewing the timeline of the tenancy.

For the cable TV issue, they state that when the moved in, this was included in the rent though the set-up was that the cable was “split” – that is, one cable account was shared among more then one unit. This is confirmed in a written account by the landlord in the evidence.

By 2010, cable service went digital and then the service required a “descrambler” device. The meant the cable service “ended abruptly.” The tenant provides that they raised this with the landlord and the landlord’s response was that the situation was not the same. In the reconvened hearing, the tenant provided that the landlord’s statement at the time was that “it wasn’t free anymore for him.”

By 2014, the tenant became the sole occupant of the unit. The tenant paraphrased what the landlord stated: ‘I don’t provide [cable], and I won’t raise the rent, so it was a great deal.’ The tenant pointed out this contradicts the landlord’s actual practice of raising the rent, which fluctuated over the term of the tenancy, which in total was 13 years. The tenant reiterated throughout both hearings that they mention rent increases only to state that the *opposite* should have occurred: rent should have been reduced along with way where the cable service ended.

From the tenant’s standpoint, this is a violation of the *Act* and the tenancy agreement and is worthy of compensation. Further, they provided that this is a breach of a material term of the tenancy agreement. This is with regard to sections 7 and 27 of the *Act*. In the reconvened hearing, the tenant provided that “box [to indicate cable TV] is checked on the tenancy agreement therefore it’s a material term.”

The amount of $2,170.00 is the tenant “estimating” and is a “minimum” of the cost they incurred at $35.00 per month for a 62-month period, the duration of the tenancy agreement from 2014. Additionally, they submitted a statement of account and credit card statements that show payments they made for cable service in 2015 for the total amount of $670.75. In a written statement, they provided this amount for comparison (at $53.31 per month) to show their good faith efforts at minimizing this portion of their claim. Additionally, they stated this

stands as “definitive proof that the landlord did not provide cable television service between January and September of 2015.”

In the written submission prepared in advance of this hearing – points of which were sent to the tenant via email on July 22, 2020 – the landlord submitted three key points: they never raised the rent for 10 years; they allowed the tenant to sublet and Airbnb; and the “evicted a fellow tenant, a tenant that [the tenant] signed off on.” The landlord outlined the costs they incurred for each of these points.

In the initial hearing, the landlord raised the point that the discussions they had with the tenant was that a new connection of cable could entail a rent increase, and the landlord did not increase the rent over the 10-year total period.

In the reconvened hearing, the landlord reiterated that the rent amount paid by the tenant over the years did not reflect true market value. They objected to the indication that cable was provided was a “material term” in the tenancy agreement. They also submitted that the tenant’s loss, as claimed, was “beyond a basic cable package”, and there were other services available, with other lower cost options available at the time of the tenant’s loss of use.

The tenant claims an amount of $3,265.00 for issues about the condition of the garbage collection bin and their part in cleaning up that area. The garbage and recycling were handled by the city. This is the cost they present for a larger garbage bin with independent collection bi-weekly. The need for clean up was an ongoing occurrence, and the tenant provided emails of communication on the issue with the landlord, photos, and their breakdown of the cost of a replacement service over the previous 62 months.

In the initial hearing, the landlord’s agent spoke to the pictures provided to state that an issue with city garbage collection would have been dealt with in proper fashion by the landlord.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The total of the deposit is $734.00. The landlord takes no issue with this amount and does not dispute the tenant's submissions on their right to repayment of the security deposit. Moreover, their agent acknowledged that the landlord waived any right to claim for damage against the deposits where the specific instruction regarding inspection in the addendum runs counter to what is provided for regarding condition inspections and reports in the *Act*.

Even though the landlord presents monetary loss for cleaning duties because of the tenant, this hearing process is not to determine the landlord's right to claim against the deposit. They did not file a claim on the amounts they specified in their response to the tenant and I give that no consideration. Rather, my determination shall be whether the landlord did what is required by the *Act* in relation to the disposition of the security deposit at the end of the tenancy.

I accept that the landlord had the tenant's forwarding address by the time the tenancy ended. The landlord did not apply for dispute resolution within 15 days of either the end of tenancy or receiving the tenant's forwarding address. I find there was no agreement that the landlord could retain any amount of the security deposit or pet damage deposit.

These actions of the landlord are a breach of the *Act*. The landlord must pay the tenant double the amount of the security deposit. This amount is $734.00. As per section 38(6) of the *Act*, the landlord must pay the tenant double the deposit amount: this is $1,468.00.

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.

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.

A damage can be quantified by its impact and can include the loss of a service or facility provided under a tenancy agreement. Essentially this would mean a party to the tenancy agreement had failed to comply with the terms therein.

I establish as fact that cable television is a "service or facility" as set out in section 1 of the *Act*. I also find as fact that the service was terminated prior to the tenant signing as the sole tenant on the agreement in 2014. The item is clearly delineated on the agreement as specifically included in the rent.

The tenant submits this service was a material term of the tenancy agreement. The *Act* section 27(1)(b) sets out: "A landlord must not terminate or restrict a service or facility if . . .(b) providing the service or facility is a material term of the tenancy agreement. The landlord objects to use of this term. The Residential Policy Guideline 8 – that which gives a statement of the policy intent of the legislation – provides that: "A material term is a term that the parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

Based on the evidence and testimony before me, I find the indication that cable TV service is provided as part of the rent is not a material term in the tenancy agreement. This is not a matter that violated the tenancy agreement to a degree that constitutes a breach of a material term. While termination of this service was abrupt, the consequences of that are not severe with respect to the importance of that service. The tenant was free to obtain a comparable service; therefore, a service of this nature is not basic or fundamental to the existing tenancy.

In contrast to a material term is the provision within the *Act* section 27(2):

> A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction of the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find the tenant has established the service was terminated. I also find the tenant has established there was no reduction in rent that reflects the reduction in the value of the tenancy.

I accept as fact that the tenant made attempts to establish these points to the landlord during the tenancy. The evidence shows the landlord's replies referred to the comparable market value of rent and the fact that there were no rent increases.

In their written submission, the tenant stated: "I acknowledge failure to address these losses via formal arbitration during the term of my tenancy. They provided that this was "understandable" in the midst of a situation where "the nature of the landlord's management of

the property, in which general service and repair provision in the apartment was a recurring problem." Further: "In the context of seeking to have more serious ongoing problems addressed . . . I was often made to understand that there was a limit to how much I could ask of the landlord."

With reference to the four points of consideration above, I find the tenant has not explained fully why they left the issue in abeyance for as long as they did. Their submission speaks to "other general service and repair provision"; however, the specifics are not provided. I am not satisfied of the fact that ongoing other service and repairs continued on for the entire 62-month period for which the tenant claims.

To reiterate, the *Act* section 7 provides that the party who requests compensation "must do whatever is reasonable to minimize the damage or loss." I find if the issue was as prevalent as the tenant claims, they had legal avenues to pursue for rectification of the issue. This does not represent minimizing the damage when the tenant makes a claim for compensation after 5 years of the tenancy.

Based on this, I make no award for the tenant's estimate cost amount of $2,170.00. This portion of the tenant's claim is dismissed.

On the issue of garbage, the tenancy agreement also specifies that its collection is included in the rent amount. The tenant raised issues about sorting, and the inadequate size of the garbage bin to catch everything from the property. Their claim is for a much larger bin to the cost of $3,265.00 over 62 months.

On this portion, I am not satisfied of the damage or loss to the tenant. The problem with garbage was not presented with a description of the frequency of its occurrence. The messages which the tenant provided appear to be cooperative and open with the landlord. There is no record of the tenant raising this concern with the landlord earlier, and not in terms of a lack of service provided. One message suggests the tenant took on the responsibility of garbage maintenance on behalf of the sub-tenants.

In sum, there is no evidence they had proposed a new system to the landlord previously at this expense. While the garbage required ongoing maintenance and presented a flowing together of recycling rules, proper bin size and condition, and the requirement for separate clean-up, I find it was not a significant cost borne by the tenant. Ultimately the landlord bears the responsibility for the issue; however, the tenant does not show that they discussed the nature of the problem or an alternate solution in the past. I find this does not match up with a claim for a much larger bin and more frequent service, with the claim being made after the end of the tenancy.

From this consideration, I dismiss this portion of the tenant's claim.

Because the tenant was successful in their claim for the security deposit amount, I grant them reimbursement of the $100.00 application filing fee for this hearing process.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $1,568.00, for double the amount of the security deposit and the application filing fee. I forwarded a monetary order for this amount to both parties as the end result of the previous hearing. That document is dated July 6, 2020. That monetary order stands, being the same amount of award.

The tenant was provided with the July 6. 2020 Order in the above terms and the landlord must be served with **that Order** as soon as possible. Should the landlord fail to comply, the Order may be filed in the Small Claims Division of the Provincial Court 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: November 13, 2020

Residential Tenancy Branch