Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, MNDCT, FFT

Introduction

This review hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for costs of emergency repairs - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The landlord did not appear and was represented by Legal Counsel. The Parties were each given full opportunity to be heard, to present evidence and to make submissions. The Tenant gave testimony under oath. Legal Counsel confirms that the landlord provided no affidavit for these proceedings. Legal Counsel asserts that since they were personally involved in the matters in dispute, they are in the position to give evidence on the matters. Legal Counsel is hereinafter referred to as the "Landlord".

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are undisputed facts: the tenancy started on March 1, 2018. Rent of $3,800.00 is payable on the first day of each month. The Tenant was given a two month notice to end tenancy for landlord's use dated June 21, 2019 with an effective

date of August 31, 2019 (the “Notice”). The Tenant moved out of the unit on October 31, 2019.

The Tenant submits that the Landlord was sent the forwarding address by email and by registered mail on October 30, 2020. The Tenant provides copied of the email and registered mail receipt. The Landlord states that they received the Tenant’s forwarding address on November 9, 2020.

The Tenant states that they made their application and paid the filing fee for their application on October 30, 2020 but were told by the Residential Tenancy Branch (the “RTB”) that due to the COVID procedures the application would be date November 2, 2020. The Tenant confirms that their forwarding address is the same address provided in their application. The Tenant states that it paid $1,900.00 as a security deposit and $1,900.00 as a pet deposit. The Tenant claims return of double the security and pet deposit. Neither Party provided a copy of that portion of the tenancy agreement related to the collection of a security or pet deposit.

The Tenant states that the Landlord did not pay the Tenant the equivalent of one month’s rent arising from having ended the tenancy with the Notice. The Tenant claims $3,800.00. The Tenant states that a mutual agreement was entered into with the Landlord after the Notice was given but that this agreement was only an extension of the effective date of the Notice. The Tenant states that there was no rescission or withdrawal, or cancellation of the Notice made either in writing, on the mutual agreement or verbally.

The Landlord states that prior to the effective date of the Notice the Tenant asked for an extension and offered the Landlord $1,000.00 in extra monthly rent as compensation. The Landlord states that on August 12, 2019 the Parties signed a mutual agreement to end the tenancy for October 30, 2019 and that that the Tenant paid an extra $1,000.00 in rent for each of September and October 2019. The Landlord argues that this mutual

agreement cancelled the Notice with no further obligations on the part of the Landlord. The Landlord argues that the mutual agreement is not an agreement to extend the effective date of the Notice. The Landlord states that the header on this mutual agreement form sets that it is not a notice to end tenancy and that by signing the mutual agreement the Landlord will have no further obligations. The Landlord also argues that by signing the mutual agreement the Notice was both expressly and impliedly waived by the agreement to continue the tenancy after the effective date of the Notice. The Landlord provides copies of email correspondence between the Landlord and the Tenant in relation to the mutual agreement and extra rents payable. The Landlord states that the mutual agreement form with the header was sent to the Tenant by email but that the Landlord did not point out the language in the header of the agreement. The Landlord provides a copy of the mutual agreement and I note that it does not contain the header.

The Tenant states that in the summer of 2018 leaking faucets and a shower divertor were repaired by the Tenant. The Tenant claims $1,883.34 as emergency repair costs. The Tenant states that the need for repairs were not reported to the Landlord, that the items were simply repaired, and that the Landlord was informed of the repairs some time later. The Landlord argues that the repairs were not emergency repairs, and that the Landlord was not given any opportunity to make those repairs themselves.

The Tenant withdraws its claim for return of the extra rental monies paid for August and September 2019.

Analysis

Section 39 of the Act provides that despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

> (a)the landlord may keep the security deposit or the pet damage deposit, or both, and

(b)the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Section 90 of the Act provides that a document given or served given or served by mail unless earlier received, is deemed to be received on the fifth day after it is mailed. There is no evidence from either Party that the Landlord received the email transmission with the forwarding address on any date. Given the Tenant's evidence of registered mail and without evidence of earlier receipt by the Landlord, I find that the Landlord is deemed to have received the forwarding address on November 4, 2020. As this date is past the allowed time of one year from the end of the tenancy of October 31, 2019. I find that the Tenant's right to return of the security or pet deposit is extinguished. I therefore dismiss the claim for the return of the deposits.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Policy Guideline #11 provides that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the express or implied consent of the landlord or tenant to whom it is given. There is no evidence of the Tenant's express consent. The mutual agreement does not include set out that the Notice was withdrawn by the mutual agreement. I note that the header on the mutual agreement form contains the phrase "By signing this form . . . If you are a tenant this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served . . ." I do not consider the information in this header to be a pre-determination of express or implied consent merely by a signature on the form where a notice to end tenancy has already been served. Further, the Tenant signed a mutual agreement on a form without the header and there is no evidence that this header was pointed out to the Tenant in advance of the Tenant's signature. The Landlord's email communications to the Tenant repeatedly refer to the mutual agreement to end the tenancy being considered as "an extension" of the

tenancy. For these reasons and considering the Tenant's evidence that they understood that the mutual agreement was only in relation to changing the effective date of the Notice, I find on a balance of probabilities that the mutual agreement only changed the effective date of the Notice and did not cancel or withdraw the Notice. As the Tenant received the Notice, I find that the Tenant is entitled to the compensation claimed of **$3,800.00**.

Section 33(3) of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

(a)emergency repairs are needed;

(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(6)(a) of the Act provides that the requirement of a landlord to reimburse a tenant for amounts paid for emergency repairs does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that the tenant made the repairs before one or more of the conditions in subsection (3) were met. As the Tenant made the repairs without any notice to the Landlord, I find that the Tenant has not substantiated that the Landlord is required to pay for the repairs done by the Tenant. The claim for costs of emergency repairs is dismissed.

As the Tenant's application has met with some success, I find that the Tenant is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$3,900.00.**

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$3,900.00**. If necessary, this order may be filed in the Small Claims 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: October 8, 2021

Residential Tenancy Branch