Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:42 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenant JH (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness BW also attended. 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 the tenant, his witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

The tenant stated the landlord’s address for service is the basement unit of the rental unit’s address and the tenant occupied the main unit. Both units have the same mailing address.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on September 25, 2021, in accordance with section 89(1)(c) of the Act (the tracking number and the landlord's address are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on September 30, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Jurisdiction

Sections 2 and 4(c) of the Act provide:

> What this Act applies to
> 2 (1)Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.
>
> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.
> […]
> What this Act does not apply to
> 4 This Act does not apply to
> (c)living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The tenant affirmed the rental unit is a self-contained unit and he did not share the kitchen or the bathroom with the landlord. The tenant stated the landlord only entered the rental unit 3 times in the 16-month tenancy to do maintenance.

Based on the tenant's convincing testimony, I find the tenant and the landlord did not share the kitchen or the bathroom. I, therefore, have jurisdiction to render a decision in this matter.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant testified the periodic tenancy started on April 25, 2020 and ended on August 28, 2021. Monthly rent was $700.00, due on the last day of prior the month. At the outset of the tenancy a security deposit of $350.00 was collected and the landlord holds it in trust.

The tenant said he provided his forwarding address in writing on September 25, 2021 via registered mail (the tracking number is recorded on the cover page of this decision).

The tenant did not authorize the landlord to retain the deposit.

The tenant submitted an email from the landlord dated August 29, 2021 addressed to him and witness BW:

> Since you are both responsible for severely damaging my interests, there will be deductions. I have yet to receive rent from any replacement, so there will be delays in reimbursement. Since you have worked together and directly against me, and for the sake of simplicity at my end, the maths (estimated pending further developments) goes as follows:
> Total deposits provided: $350 + $375 = $825. Balance = $825-
> Both of you have left without providing notice.

The tenant is seeking compensation in the amount of $200.00 for his time to move out and the expenses with fuel to commute to work from his new rental unit, as he used to live close to his workplace and his new rental unit is farther away from his workplace.

The tenant received a one month notice to end tenancy in August 2021. The tenant did not dispute the Notice and moved out, as the landlord was hostile and the tenant feared for his safety. The tenant did not submit an application for dispute resolution because it would take too long to have a decision.

The tenant submitted a monetary order worksheet indicating a claim in the total amount of $550.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

Moving costs and fuel expenses

The tenant moved after he received a one month notice to end tenancy for cause. The tenant did not dispute the notice to end tenancy.

Based on the tenant's testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act.

I dismiss the tenant's claim for compensation for moving costs and fuel expenses.

Deposit

I accepted the undisputed convincing testimony that the tenant served the forwarding address in writing on September 25, 2021 and did not authorize the landlord to retain the deposit.

Per section 90 (a) of the Act, the landlord is deemed served the forwarding address on September 30, 2021.

The landlord has not brought an application for dispute resolution claiming against the deposit and did not return the deposit.

Based on the tenant's convincing testimony and the August 29, 2021 email, I find the landlord collected a deposit of $350.00 and did not return it.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

> (1)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.

[…]

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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[…]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant’s agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[…]

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of $700.00 ($350.00 x 2).

Over the period of this tenancy, no interest is payable on the landlord’s retention of the deposit.

Filing fee and summary

As the tenant was successful in this application, I find the tenant is entitled to recover the $100.00 filing fee.

In summary, the tenant is entitled to $800.00.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of $800.00. This order must be served on the landlord by the tenant. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: April 27, 2022

Residential Tenancy Branch