Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $6,270 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the tenant's security deposit, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

Although the tenant had a witness attend, MB (witness), the tenant did not call the witness to testify during the hearing.

Rule 3.6 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) states the following:

3.6 Evidence must be relevant

> **All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution.**
>
> **The arbitrator has the discretion** to decide whether evidence is or is not relevant to the issues identified on the application **and may decline to consider evidence that they determine is not relevant.**
>
> [emphasis added]

I find that most of the landlord's documentary evidence were photos of the rental unit before and after repairs, which I find is not relevant to the matters before me at this proceeding, which are the tenant seeking the return of April and May 2022 rent and the return of their security deposit. The landlord claims they waited until October 31, 2022 to submit their documentary evidence as the landlord wanted to submit their evidence once the had submitted their application for dispute resolution, which is to be heard in July 2023 and is not part of this Decision. The file number of the July 2023 hearing has been included on the cover page of this Decision for ease of reference. As a result, I exclude all the landlord's photo evidence as I find the photos are not relevant to the application before me.

Regarding the tenant's documentary evidence, the tenant provided a registered mail tracking number, the tracking number of which has been included on the cover page of this Decision for ease of reference. According to the tenant and the Canada Post online registered mail tracking information, the Hearing Package including evidence was mailed on April 27, 2022, to the landlord and was accepted and signed for by the concierge of the building in which the landlord confirmed they reside on April 28, 2022. The landlord claims there was no concierge at that time, which I find is inconsistent with the Canada Post tracking information. As the landlord failed to provide any supporting documentary evidence that there was no concierge, such as a letter from the strata council, I find the landlord was sufficiently served in accordance with the Act as of April 28, 2022, the date the Hearing Package was signed for and accepted. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the Decision would be emailed to them. In addition, the tenant confirmed that they are no longer claiming for the return of May 2022 rent, as the tenant was able to cancel the post-dated cheque for May 2022 and as a result, I will not consider May 2022 rent further in this Decision.

Issues to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the Act?
- Is tenant's request for their security deposit premature?
- Is the tenant entitled to the recover of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2018. The tenant claims they vacated the rental unit on March 31, 2022, whereas the landlord testified that they rental unit keys were not returned until April 8, 2022 and that the tenant continued to come and go from the rental unit in the first week of April 2022 before returning the keys. The parties agreed that at the start of the tenancy, monthly rent was $2,400 per month and was due on the first day of each month. The application states that by the end of the tenancy, the monthly rent was $2,475 per month. Monthly rent was due on the first day of each month. The tenant paid a security deposit of $1,220 at the start of the tenancy, which the landlord continues to hold.

The tenant and an incorporated company are listed as tenants on the tenancy agreement. The tenant has included their name and not the incorporated company as an applicant and as a result, I will not name the incorporated company in this Decision. The tenant also confirmed that their witness, MB, worked for the incorporate company and is not listed as a tenant, making them an occupant with no rights or obligations under the Act.

The tenant testified that they provided notice to the landlord on February 22, 2022, that they would be vacating at the end of March 2022. The tenant claims they sent a text to the landlord and called the landlord. The landlord vehemently denied that the tenant texted them and testified that the tenant called on March 2, 2022, which is insufficient notice under the Act to vacate by March 31, 2022, and that the tenant would owe rent for April 2022 as they did not return the rental unit keys until April 8, 2022. The landlord cashed the April 2022 rent cheque from the tenant in the amount of $2,450.

The tenant confirmed they did not submit a copy of the text in support that the tenant provided notice to the landlord that they would be vacating. I will address the lack of text evidence later in this Decision. The landlord after March 2, 2022, began to advertise the rental unit to minimize their loss and secured a new tenant who moved in May 15, 2022.

Regarding a written forwarding address, the landlord testified that the tenant failed to provide any written forwarding address since they vacated the rental unit. The tenant could not recall if they served the landlord with their written forwarding address. The tenant stated that the landlord had their new address when they served the Hearing Package. The tenant was advised that the application itself does not constitute a written forwarding address, which I will address later in this Decision.
As a result of the above, the parties were advised that the tenant’s confirmed address during the hearing would be included on the cover page of this Decision and that I find

the landlord was served with the tenant's written forwarding address as of the date of the hearing, November 8, 2022.

At the end of the hearing, the tenant stated that they wanted to discuss other breaches of the Act by the landlord, and the tenant was advised that there were no other matters properly before me and the hearing concluded after 51 minutes.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Sections 45(1) and 45(4) of the Act set out how a tenant may end a month-to-month (periodic) tenancy as follows:

Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) **A notice to end a tenancy given under this section must comply with section 52** *[form and content of notice to end tenancy]*.

[emphasis added]

The relevant portions of section 52 of the Act state the following in terms of form and content of a tenant's notice to end the tenancy as follows:

Form and content of notice to end tenancy

52 In order to be effective, **a notice to end a tenancy must be in writing and mus**t

(a) **be signed and dated by the** landlord or **tenant giving the notice,**

(b) **give the address of the rental unit,**

(c) **state the effective date of the notice,**

[emphasis added]

Given the above, I find a text message from the tenant would not comply with section 52 of the Act as the landlord is unable to rely on a text message before attempting to secure a new tenant as a text message could not be sent or received for a variety of reasons, including in this matter, where the landlord stated they never received a text message from the tenant. Furthermore, I find that the tenant could not end the tenancy by way of a telephone call either as the landlord would have no written notice or proof to show that the tenant provided their notice to vacate. In addition, I find the landlord would require something in writing before advertising the rental unit to a new tenant, to avoid having two simultaneous tenancy agreements, should the tenant change their mind after calling the landlord to end the tenancy and that such would prejudice the landlord.

Section 26(1) of the Act applies and states:

Rules about payment and non-payment of rent

26(1) **A tenant must pay rent when it is due under the tenancy agreement,** whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[emphasis added]

Given the above, I find that the tenant owed all of April 2022 rent as of April 1, 2022, the date it was due. I find the tenant has provided insufficient evidence that they are entitled to the return of April 2022 rent under the Act as I find the tenant has not proven part 1 of the 4-part test for damages or loss. I find the earliest the tenant could end the tenancy was April 30, 2022, as the landlord confirmed they were aware on March 2, 2022, via telephone that the tenant would be vacating, albeit an improper notice to end tenancy by the tenant as it did not comply with section 52 of the Act. Accordingly, I dismiss the tenant's application for the return of April 2022 due to insufficient evidence, without leave to reapply.

Regarding the tenant's written forwarding address, I have considered RTB Practice Directive 2015-01, which states in part the following:

> A forwarding address only provided by the tenant on the Application for Dispute Resolution form **does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address**.
>
> [emphasis added]

As a result of the above, **I find that the application itself is not a forwarding address** as it does not meet the requirement of a separate written notice that is signed and dated by the tenant. Therefore, I find that the date of the hearing, **November 8, 2022**, is the date the landlord has received the written forwarding address of the tenant. For ease of reference, I have included the forwarding address on the cover page of this Decision. Accordingly, I find the tenant's claim for the return of their security deposit is premature. The tenant has the liberty to reapply for the return of their security deposit.

As the April 2022 repayment of rent was dismissed and the security deposit claim is premature, I do not grant the filing fee.

Conclusion

The tenant's claim related to April 2022 rent repayment, is dismissed without leave to reapply, due to insufficient evidence.

The tenant's claim related to the security deposit is premature. The landlord has the written forwarding address from the tenant as of the date of the hearing, November 8, 2022. The tenant has liberty to reapply for the return of their security deposit.

The filing fee is not granted.

This Decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 9, 2022

Residential Tenancy Branch