Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNSD MNDCT MNECT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') package and amendment, with the exception of the tenant's photographs. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment. As the landlord was not served with the photographs, the photos contained in the tenant's evidence package will be excluded for the purposes of this hearing. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act.*

Preliminary Issue-Tenant's Forwarding Address

The tenant had amended their application on May 26, 2022 to request the return of their security and pet damage deposits. The landlord testified in the hearing that the tenant did not provide them with a forwarding address. The tenant testified that they could not recall whether they did.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or file an application for dispute resolution to keep the deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

> *The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.*

As there is insufficient evidence to support that the landlord was previously provided with the tenant's forwarding address, and as both parties were present at the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I informed both parties that the date of the hearing, January 26, 2023, serves as the date that the landlord was served with the tenant's forwarding address, and that that the security and pet damage deposit must be dealt with in accordance with section 38 of the *Act*.

If the landlord fails to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on January 1, 2021, and ended sometime in April 2022. The landlord submits that the tenant had vacated the property on April 21, 2022, while the tenant submits that the tenancy ended on April 29, 2022. Monthly rent was set at $2,400.00, payable on the first of the month. The landlord still holds the security deposit of $1,200.00, and pet damage deposit of $600.00.

The tenant filed this application to recover utilities that are owed to the tenant by the landlord. Both parties confirmed that the hydro bills were in the tenant's name, which the landlord would reimburse the tenant 50% of. The landlord submitted a copy of an email confirming that the tenant had agreed to this arrangement.

The tenant submitted a claim in the amount of $1,200.00 for utilities that the landlord did not reimburse them for. The landlord does not dispute that they still owe the tenant some money, but testified that the amount should be $182.25, not $1,200.00. The landlord submitted detailed documentation to show the correct amount owed. The landlord testified that they would reimburse the tenant upon receipt of the hydro bill, and that they only received the two outstanding bills with this application. The landlord agreed to reimburse the tenant the $182.25 owed.

The tenant also filed a monetary claim in the amount of $1,200.00 for compensation pursuant to section 51 of the *Act* for the landlord's failure to use the rental unit for the stated purpose. The tenant stated that they were requested compensation as the landlord had entered the tenant's rental unit before the end of the tenancy, without proper notice or permission. The tenant submits that the landlord went through the tenant's belongings, and removed appliances and plumbing fixtures before the end of this tenancy.

The landlord disputes the tenant's claim for $1,200.00 as the tenant was never served with a Notice to End Tenancy for Landlord's Use. The landlord further testified that the tenant had confirmed in writing that they would be moving out on April 18, 2022, and would not be returning after April 19, 2022. The landlord submits that they had permission to enter the rental unit after that date to perform any repairs or improvements.

The landlord submitted in evidence a copy of the tenant's email dated March 26, 2022 informing the landlord that they would be moving out at the end of April 2022. The landlord also submitted a copy of a text message from the tenant dated April 8, 2022 which stated "Hi fyi I'm moving my stuff out on the 18th and will definitely not be coming back after the 19th maybe you could come do your measurements after that time so I

can enjoy some privacy." The landlord provided another email dated April 21, 2022 from the tenant which stated "I've moved my things it's all yours. Anything I left was there when I moved in". The landlord disputes that the tenant was ever denied the use of any appliances or running water while the tenant was living there.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenant requested reimbursement of unpaid utilities in the amount of $1,200.00 from the landlord. The landlord disputed the tenant's claim, stating that they only owed $182.25. In review of the evidence and testimony before me, I find that the tenant failed to support that the landlord owes the tenant $1,200.00. On the other hand, I find that the landlord had provided detailed evidence to support that they owe the tenant $182.25. Accordingly, I order that the landlord reimburse the tenant the $182.25. I dismiss the remainder of the tenant's claim without leave to reapply.

The tenant expressed concern over the landlord's requirement that the tenant put the entire hydro bill on their name. I note that this application only references a dispute for monetary compensation under the *Act.* Furthermore, this tenancy had ended in April 2022.

Section 62(4)(a) of the Act states that an application should be dismissed if the application or part of an application does not disclose a dispute that may be determined under the *Act.* As this application pertains to a tenancy that had already ended, and as the only applications before me relate to a monetary claim, I decline to make any further findings in relation to the how the utility bills were managed during this tenancy. For future reference, I do note that Residential Policy Guideline #1 states the following about shared utilities:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

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The tenant requested further compensation in the amount of $1,200.00 for this tenancy. I note that although the tenant's application references compensation related to a Landlord's Notice to End Tenancy for Landlord's Use, this tenancy did not end pursuant to a Notice under section 49 of the *Act.*

An application for compensation pursuant to section 51 of the *Act* requires that a notice be given under section 49 of the *Act*, as noted below:

Tenant's compensation: section 49 notice

> **51** (1) 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…
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> (2) In addition to the amount payable under subsection (1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
>
> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As this tenancy did not end pursuant to a Notice to End Tenancy under section 49 of the *Act*, the tenant is not entitled to compensation under section 51 of the *Act.*

The tenant also requested compensation stating that “I moved out two weeks early because the landlord entered my home without notice and starting renovating to improve the suite for new potential tenants…”. As noted above, the onus is on the applicant to support the losses claimed. In review of the evidence and testimony before me, I find that the tenant did inform the landlord that they “will definitely not be coming back after the 19th”. On April 21, 2022, the tenant emailed the landlord informing them that “I’ve moved my things it’s all yours. Anything I left was there when I moved in”. I find that it would have been reasonable for the landlord to think that the tenant would not be returning after April 21, 2022, and that the landlord may take possession of the rental unit as of that date. In light of the evidence before me, I find that the tenant failed to support that the landlord had entered the tenant’s rental unit without their permission or without proper notice, or that the landlord had removed plumbing or appliances while the tenant was still residing there. I find that the tenant has failed to establish that the landlord had contravened the Act or tenancy agreement, or that the landlord had

caused the tenant the loss claimed. Accordingly, I dismiss the tenant's claim for compensation without leave to reapply.

As the tenant's application had some merit, I allow the tenant to recover the filing fee paid for this application.

Conclusion

I issue a $282.25 Monetary Order in the tenant's favour for utilities owed to the tenant, plus recovery of the $100.00 filing fee.

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for the return of their security deposit is dismissed with leave to reapply.

The remainder of the tenant's application is dismissed without leave to reapply.

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: February 22, 2023

Residential Tenancy Branch