Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of $15,600.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- recovery of the Tenant's security deposit and/or pet damage deposit in the amount of $750.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's agent LC (a co-owner of the property), and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant called a witness, RC, to testify during the hearing. The Landlord called two witnesses, HC and SB.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord stated that the Tenant had provided an incomplete notice of dispute resolution proceeding package (the "NDRP Package"). The Landlord confirmed that she received a courtesy copy of the NDRP package from the Residential Tenancy Branch (the "RTB"). Based on the foregoing, I find the Landlord was sufficiently served with the NDRP Package by the RTB pursuant to section 71(2)(c) of the Act. The Tenant was unable to confirm whether he had served the Landlord with a full copy of his documentary evidence submitted to the RTB. As a result, I informed the Tenant that I would not consider his documentary evidence but that he could read from them during the hearing.

The Tenant acknowledged receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Preliminary Matter – Clarification of Tenant's Claims

I note the Tenant's application mentions that the Tenant had paid $400.00 for hydro in April 2022, which was "extremely high" as the Tenant would normally pay $150.00 for this time of the year. However, I do not find the Tenant's application to have included a claim seeking to recover any portion of this hydro bill payment from the Landlord, nor do I find the Tenant's application to specify the amount sought (e.g. $400.00, $250.00, or another amount). Under Rule 2.2 of the Rules of Procedure, the claim is limited to what is stated in the application. Therefore, I am unable to consider the issue of the hydro bill as part of this application.

Issues to be Decided

1. Is the Tenant entitled to $15,600.00 for monetary loss or money owed by the Landlord?
2. Is the Tenant entitled to recover the security deposit?
3. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on November 19, 2019 and was month-to-month. Rent was $1,300.00 per month. The Tenant paid a security deposit of $750.00.

The parties signed a document dated February 6, 2022, which states that the property is being listed for sale and that the property is to be vacated by May 1, 2022. The parties also signed a mutual agreement to end a tenancy in the Residential Tenancy Branch form dated February 14, 2022, with a note stating "move out May 1st, 2022".

Copies of the February 6, 2022 document and the February 14, 2022 mutual agreement to end tenancy have been submitted into evidence.

The Tenant stated that he became aware he would qualify for compensation due to the way his “eviction” was handled. The Tenant stated he was later told that a landlord cannot require a tenant to move if the house is being sold. The Tenant stated that he thought it was odd that the Landlord asked him to sign the February 14, 2022 mutual agreement again, as he had already agreed to move out when he signed the February 6, 2022 document. The Tenant stated that he was not made aware of the laws until March 2022. The Tenant’s application states in part as follows:

> Compensation of 1 yea (*sic*) rent being requested because I should have been allowed to remain in suite while house was on the market and new owners should have been given option of keeping me as a tenant.

The Tenant stated that after moving out, he was sleeping in his car. The Tenant disagreed that he had plenty of time to find a new place, since places do not become available until several weeks before moving day. The Tenant stated that he spent five months after moving out to look for a new place.

The Landlord stated that the Tenant knew the house would be sold before moving in and had been aware throughout the tenancy. According to the Landlord’s written submissions, the Tenant had agreed verbally and in writing that he would move out when requested because the house will be for sale. The Landlord’s submissions refer to clauses in the tenancy agreement addendum signed by the parties which confirm this. The Landlord stated that the Tenant signed the February 6, 2022 document and February 14, 2022 mutual agreement willingly and had agreed to move out by May 1, 2022.

The Landlord stated that the Tenant was supposed to move out by May 1, 2022 but did not move out until May 5, 2022. The Landlord submitted that the Tenant had verbally agreed for the Landlord to keep the security deposit in full. HC confirmed that he witnessed this.

The Tenant stated that he might have sent his forwarding address to the Landlord via text, but did not recall the date. The Landlord stated that she received a text from the Tenant three days after he moved out, but it only had the suite, house number, and street name.

The Landlord confirmed that the rental unit was sold in July 2022.

According to the Landlord's written submissions, the Tenant did not remove his personal belongings from the rental unit until May 5, 2022. The Landlord submitted that the Tenant owed $209.68 for five extra days of occupying the rental unit. The Landlord submitted that the Tenant left behind personal items in disarray, including oily metal car parts piled on the side of the driveway, car tires, ladder, wood materials and debris. The Landlord submitted that the inside of the rental unit was dirty as well, and the Tenant had left behind items such as a mattress and couch. HC and SB confirmed that the Tenant had left these items behind and had left the rental unit in a dirty state. The Landlord submitted that the Tenant received a free month of rent for March 2022 to do some work on the bathroom, but the work was incomplete and the Landlord had to hire someone else to complete it. The Landlord submitted receipts for cleaning, hauling away the Tenant's couch, and bathroom repair.

The Tenant denied that items were left behind. The Tenant acknowledged that there were items left in the driveway which were later removed. The Tenant stated that he did not wholeheartedly agree for the Landlord to keep the security deposit but was facing a united front. The Tenant disputed the amount of time required by the Landlord to clean. The Tenant stated that if he had more time to move things into storage, he might have done a better job, but he did the best he could.

Analysis

1. Is the Tenant entitled to $15,600.00 for monetary loss or money owed by the Landlord?

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant argues that he is entitled to $15,600.00 or 12 months' rent as compensation from the Landlord because the Tenant should have been allowed to stay even though the rental unit was being sold.

I note the Act does not allow a landlord to issue a written notice for unilaterally ending a month-to-month tenancy in order to sell a rental unit, notwithstanding clauses in the tenancy agreement which purport to give a landlord the right to do so.

However, under section 44(1)(c) of the Act, a tenancy can be ended if the landlord and tenant agree in writing to end the tenancy.

I find this tenancy ended on May 1, 2022 pursuant to section 44(1)(c) of the Act by the parties' written consent, which I find to be evidenced by the February 6, 2022 document and by the February 14, 2022 mutual agreement. I find the Tenant acknowledged during the hearing that he had agreed with the Landlord to end the tenancy on May 1, 2022. I accept the Tenant was not obligated to sign these documents and that the Tenant may have changed his mind after signing them. Nevertheless, I find the Tenant had voluntarily signed the February 6, 2022 document and the February 14, 2022 mutual agreement to end the tenancy on May 1, 2022. I find there is insufficient evidence to suggest that the Tenant had signed either the February 6, 2022 document or the February 14, 2022 mutual agreement under duress, coercion, or undue influence from the Landlord or any person on behalf of the Landlord.

In addition, I note section 51(2) of the Act allows a tenant to claim compensation equivalent to 12 times the monthly rent if the tenant receives a two month notice to end a tenancy for landlord's use of property under sections 49(3), (4), or (5) of the Act from the landlord, and the landlord or the purchaser who asked the landlord to give the notice does not accomplish the stated purpose for ending the tenancy in accordance with the requirements of section 51(2) of the Act.

However, I find that section 51(2) of the Act is not applicable in the circumstances. I do not find the Landlord to have issued a notice to end tenancy under section 49 of the Act, which must comply with the form and content requirements of section 52 of the Act in order to be effective. Under section 52 of the Act, the notice to end tenancy must, among other things, be given in writing, be signed by the Landlord, and be in the approved Residential Tenancy Branch form. I find the Landlord did not issue such a notice to end tenancy. Therefore, I conclude that the Tenant is not entitled to compensation of 12 months' rent under section 51(2) of the Act.

Alternatively, if the Tenant claims compensation of $15,600.00 under section 67 of the Act, the burden of proof is on the Tenant to prove the existence of damage or loss, and that it stemmed directly from a violation of the Act, the regulations, or the tenancy

agreement by the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the damage or loss. Finally, the Tenant must prove that he did what was reasonable to minimize the damage or loss suffered.

As I find the parties to have ended the tenancy by mutual agreement, I find there is insufficient evidence to show that the Landlord had failed to comply with the Act, the regulations, and the tenancy agreement, which caused the Tenant to suffer damage or loss. I also do not find the Tenant to have submitted evidence to prove that he had suffered damage or loss in the amount of $15,600.00.

The Tenant's claim for monetary loss or money owed in the amount of $15,600.00 is dismissed without leave to re-apply.

2. Is the Tenant entitled to recover the security deposit?

Section 38(1) of the Act states that within 15 days of the later of (a) receiving the tenant's forwarding address in writing, and (b) the date the tenant moves out of the rental unit, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

Section 38(6) of the Act states that if a landlord does not comply with section 38(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.

I find that for the purposes of calculating the deadline under section 38(1) of the Act, this tenancy ended on May 1, 2022. I note it is disputed whether the Tenant had overheld in the rental unit beyond that end date.

Section 88 of the Act provides the acceptable ways in which documents such as a forwarding address letter may be served on a person. These methods include:

- Leaving a copy with the person
- If the person is a landlord, leaving a copy with an agent of the landlord
- Sending a copy by registered mail or registered mail to the address at which the person resides, or if the person is a landlord, to the address at which the person carries on business as a landlord
- By leaving a copy at the person's address with an adult who apparently resides with the person

- By leaving a copy in a mailbox or mail slot for the address at which the person resides, or if the person is a landlord, at the address at which the person carries on business as a landlord

Based on the evidence presented, I find the Tenant did not serve the Landlord with his forwarding address using an accepted method of service under section 88 of the Act. I note that text messaging is not one of the accepted methods of service under section 88 of the Act. Furthermore, I accept the Landlord's evidence that she did not receive a full address from the Tenant which included the city and postal code. Under these circumstances, I find there is insufficient evidence to prove that the Tenant had served the Landlord with his forwarding address properly.

I note the Landlord would have received the Tenant's full address in writing on this application. However, according to the Residential Tenancy Branch Practice Directive "Forwarding Address for the Return of a Tenant's Security Deposit" dated September 21, 2015:

> 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. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

Since the Landlord now has knowledge of the Tenant's full forwarding address, which I accept is the Tenant's address stated on this application, I order that the Landlord is sufficiently served with the Tenant's forwarding address in writing effective the date of this decision, or **March 9, 2023**, pursuant to section 71(2)(b) of the Act.

I find the deadline for the Landlord's obligations under section 38(1) of the Act is therefore 15 days from the date of this decision, or **March 24, 2023**.

As per the Practice Directive, a tenant can re-apply for double the security deposit if the landlord does not claim against or return the security deposit within 15 days of the effective service date ordered by the arbitrator. Therefore, I dismiss the Tenant's claim for the return of the security deposit with leave to re-apply.

2. Is the Tenant entitled to recover the filing fee?

The filing fee is a discretionary award issued by an arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the Tenant has not been successful, I find the Tenant is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

The Landlord has until **March 24, 2023** to return the security deposit 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. If the Landlord does not taken action on or before March 24, 2023, the Tenant is at liberty to re-apply for double the security deposit.

The Tenant's claims for monetary compensation of $15,600.00 and reimbursement of the filing fee are dismissed without leave to re-apply.

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: March 09, 2023

Residential Tenancy Branch