Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On August 15, 2022, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package, including some evidence, to the Tenant by registered mail on September 2, 2022. As well, he submitted that he served a second Notice of Hearing package, including some evidence, to the other person he named as a Respondent on this Application, by email on September 2, 2022. However, he did not have permission to serve this person in this manner by way of a Substituted Service Decision. While he stated that he had consent from this person to be served documents by email, he did not submit this for consideration.

The Tenant confirmed that she received this Notice of Hearing and evidence package by registered mail. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as the Landlord served another party via email without permission or proof, I am not satisfied that this other party was sufficiently served the Landlord's Notice of Hearing and evidence package. As such, this person has been removed from the Style of Cause on the first page of this Decision, and this matter will proceed against the Tenant solely.

The Landlord then advised that he served additional evidence to the Tenant by registered mail on May 8, 2023; however, the Tenant testified that she did not receive this package. As service of this evidence was late and did not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have excluded this late evidence and will not consider it when rendering this Decision.

The Tenant advised that her evidence was served to the Landlord by hand on May 2 or 3, 2023, and she referenced a signed proof of service document stating that this was served on May 2, 2023. The Landlord testified that he received this on May 4, 2023; however, he stated that he had reviewed this evidence and was prepared to respond to it anyways. Based on this signed proof of service document, I am satisfied that this evidence was more likely than not served on May 2, 2023. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2020, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around July 31, 2022. Rent was established at an amount of $3,500.00 per month and was due on the first day of each month. A security deposit of $1,750.00 and a pet damage deposit of $1,750.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlord confirmed that neither a move-in inspection nor a move-out inspection report was ever conducted with the Tenant. As well, he confirmed that the Tenant provided her forwarding address to him by email on August 4, 2022, and that he used this address to make this Application.

All parties acknowledged that the Landlord returned the Tenant's pet damage deposit on or around July 31, 2022, but the Landlord is still holding the Tenant's security deposit in trust. The Tenant testified that she never provided the Landlord with written authorization to withhold any amount of the security deposit.

In addressing the Landlord's claims, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Landlord applied for a Monetary Order for compensation in the amount of $1,750.00, which happened to be the exact amount of the security deposit. However, he did not fill out a Monetary Order Worksheet, nor did he indicate anywhere in this Application how this figure was broken down or derived.

As the Landlord claimed for remedy of nine different issues, with no indication of how the loss that he suffered repairing these nine issues totalled exactly the amount of the security deposit, I find it would be prejudicial against the Tenant as it is impossible for her to even understand what the Landlord was specifically claiming for. Given that the Landlord testified that he renovated the rental unit instead, I find it more likely than not that the Landlord does not even know the exact costs of his alleged claims. Moreover, as the Landlord later questioned whether he could "claw back" $3,500.00 from the Tenant, I find that this further supports a conclusion that he has no clue how much of a

loss he actually suffered as this Application was made only seeking an alleged loss of $1,750.00. This Application for monetary compensation, as constructed by the Landlord, appears to be frivolous at worst, and woefully inadequate at best.

Regardless, I do not find that the Landlord has made it abundantly clear to any party that he is certain of even what would be close to the exact amounts he believes is owed by the Tenant. As I am not satisfied that the Landlord outlined his claims precisely, with clarity, I do not find that the Landlord has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For this reason, I dismiss the Landlord's Application with leave to reapply.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit and/or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence before me is that neither a move-in inspection nor a move-out inspection report was ever conducted with the Tenant. As a result, I find that the Landlord did not comply with the *Act* or *Regulation* in completing these reports. Therefore, I find that the Landlord has extinguished the right to claim against the security deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address by email on August 4, 2022, and he used this address to file this Application. While the Landlord made an Application to attempt to claim against the deposit within 15 days of receiving the Tenant's forwarding address, the Landlord was not permitted to do so as he extinguished this right. As such, I am satisfied that the Landlord has not complied with the *Act*. Therefore, I find that the doubling provisions do apply to the security deposit in this instance. Ultimately, under these provisions, I grant the Tenant a monetary award amounting to double the original security deposit, or **$3,500.00**.

As the Landlord returned the pet damage deposit in accordance with the *Act*, I am satisfied that the Landlord was in compliance with the *Act* in that regard.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Landlord's Application for monetary compensation is dismissed with leave to reapply.

The Tenant is provided with a Monetary Order in the amount of **$3,500.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

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: May 11, 2023

Residential Tenancy Branch