Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL, MNSDS-DR, FFT

Introduction

This hearing dealt with monetary cross applications. The landlord applied for compensation for unpaid rent and damage to the rental unit; and, authorization to retain the tenant's security deposit. The tenant applied for return of double the security deposit.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord sent his proceeding package to the tenant via registered mail on November 21, 2022 and the tenant received the package. I also heard the landlord sent evidence to the tenant via email on July 17, 2023 and August 12, 2023. The tenant received these emails and did not take issue with receiving the evidence via email or its lateness. Accordingly, I admitted the landlord's materials for consideration in making this decision.

The tenant's proceeding package was sent to the landlord via registered mail on December 5, 2022 but the registered mail was returned as unclaimed. The landlord explained that he was out of the country at that time, until June 2023. The landlord explained that he thought the tenant would serve him by email.

The tenant testified that he also emailed his proceeding package and evidence to the landlord on July 25, 2023. The landlord testified he could not recall receiving the tenant's email; however, the landlord acknowledged the tenant sent him a video via email but he could not open the video as he does not know how to do so.

I was satisfied the tenant met his obligation to serve the landlord with his proceeding package and evidence in a manner that complies with the Act (registered mail); however, in consideration that the landlord stated he had not seen the materials, or did not recall seeing the materials, I explored ways to ensure a fair hearing, including the possibility of an adjournment. The landlord asked for a description of the tenant's claim, which I provided. Upon hearing the tenant was only seeking return of double the security deposit, the landlord stated that he was prepared to respond to that matter. Accordingly, I heard the tenant's application.

During the hearing, I noted the landlord's damage claim that was filed lacked full particulars and the landlord's list of damages was only emailed a few weeks before the hearing and for an amount that was different than that indicated on the application. There was no Amendment submitted or served by the landlord. The landlord requested withdrawal of the damage claim, without prejudice, so that he may pursue the larger damage claim that includes full particulars. The landlord's request for withdrawal was granted and the landlord remains at liberty to file another Application for Dispute Resolution for damage to the rental unit. Accordingly, I only heard the landlord's claim for unpaid rent.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent?
2. Is the tenant entitled to doubling of the security deposit?
3. Award of the filing fee(s).
4. Disposition of the security deposit.

Background and Evidence

The tenancy started on July 1, 2019. The tenant paid a security deposit of $1100.00. The monthly rent was set at $2200.00 plus $120.00 "toward assessment" for a monthly obligation of $2320.00 payable on the first day of every month. The legality of the $120.00 charge "toward assessment" was not an issue raised and I did not explore it further.

Both parties participated in a move-in inspection and a move-in inspection report was prepared.

The tenancy ended on October 31, 2022 when the tenant vacated the rental unit. Both parties participated in a move-out inspection together on October 31, 2022 and a move-

out inspection report was prepared. The tenant provided his forwarding address on the move-out inspection report. The move-out inspection report was sent to the tenant, by mail to the tenant's forwarding address, on November 4, 2022; however, the tenant submitted the landlord altered it after the tenant signed it. I did not explore whether the move-out inspection report was altered after the tenant signed it as it was not relevant to the matter before me.

On November 5, 2022 the landlord filed his Application for Dispute Resolution. The landlord seeks unpaid rent of $2320.00 for the month of November 2022. The landlord's proceeding package was prepared on November 18, 2022 and mailed to the tenant on November 21, 2022. The tenant received it on November 22, 2022.

The tenant applied for double the security deposit on the basis the tenant did not receive the landlord's claim until November 22, 2022 which is more than 15 days after the tenancy ended and the tenant provided a forwarding address. For reasons provided in the analysis, I informed the parties that the tenant was not entitled to doubling of the deposit and I dismissed the tenant's application. I informed the parties that I would consider the single amount of the deposit under the landlord's application.

In filing his claim for unpaid rent, the landlord did not provide the basis for this request on his Application for Dispute Resolution and I requested it during the hearing. Below, I have summarized the parties' respective positions.

The landlord testified that on September 29, 2022 or September 30, 2022 the tenant emailed his notice to end tenancy to be effective on October 31, 2022. The landlord seeks unpaid rent for November 2022 due to email being improper service. The landlord responded to the tenant right away, informing the tenant that email was not acceptable. Nevertheless, was willing to work with the tenant and the landlord started advertising the unit for rent on September 30, 2022 and there were showings of the unit to prospective tenants right away.

The landlord is of the position the rental unit did not rent for November 2022, despite advertising it starting on September 30, 2022, because the rental unit did not look like the million dollar property based on feedback he received from a prospective tenant. The landlord also attributed the inability to rent the unit for November 2022 to the rental unit being messy and storing of the tenant's bicycle in the rental unit.

The landlord testified that in advertising the rental unit, he indicated the rental unit was available as of November 1, 2022 and the advertised rental rate was over $2700.00 per

month. The landlord testified that the rental unit was rented to a new tenant who moved into the rental unit in December 2022 and that new tenant is paying over $2700.00 per month.

The tenant testified that he sent his notice to end tenancy to the landlord on September 30, 2022 via email. The landlord responded the same day, informing him he would not accept his notice by email and the tenant would have to use one of the other methods of service. The tenant was of the position that using email was satisfactory considering the landlord was often out of the country and the parties had communicated by email before. Also, the tenancy agreement includes the landlord's email address.

The tenant pointed out that the landlord acknowledged receiving his notice the same day he sent it. The tenant theorized that the landlord just wanted to buy more time to re-rent the unit by insisting on another method of service that would not allow the tenant to give a notice to end tenancy before the end of September 2022. The tenant did not give his notice to end tenancy any other way and the landlord did proceed to advertise the rental unit right away and there were showings of the rental unit to prospective tenants.

The tenant acknowledged that during October 2022 his rental unit had several boxes in it as he was in a state of packing and preparing to move. The tenant acknowledged that he did not remove his bicycle from the rental unit because it is worth approximately $6000.00 and there had been previous thefts of bicycles. The tenant was not willing to take that risk with his expensive bicycle.

Analysis

Return of security deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

Under section 44(1)(d) a tenancy ends when a tenant vacates the rental unit.
In this case, I find the tenancy ended and the tenant provided his forwarding address in writing on the same date: October 31, 2022. Accordingly, the landlord had until

November 15, 2022 to either refund the security deposit, get the tenant's written consent to retain it, or file an Application for Dispute Resolution to make a claim against it.

The landlord filed a claim against the tenant and his security deposit on November 5, 2022. Accordingly, I am satisfied the landlord met one of the obligations under section 38(1) of the Act and the landlord does not owe the tenant double the security deposit.

In light of the above, I dismiss the tenant's application.

I shall consider disposition of the single amount of the security deposit under the landlord's application.

Claim for unpaid rent

Awards for compensation are provided in section 7 and 67 of the Act unless a different provision applies, such as section 38 for return of deposits. The landlord's claim for unpaid rent is available under section 7 of the Act.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. As provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether the landlord's proved the following:

- the tenant violated the Act, regulation or tenancy agreement;
- the tenant's violation resulted in damages or loss for the landlord;
- the amount of or value of the loss; and
- the landlord acted reasonably to minimize that damage or loss.

Based on the evidence before me, I find it is clear the tenant sent a notice to end tenancy to the landlord, via email, on September 30, 2022 and the landlord received the notice the same day as the landlord responded to it, via email, that same day. The landlord started advertising the unit immediately on September 30, 2022 according to the landlord, and it is undisputed that there were showings of the unit shortly thereafter.

The parties were in dispute as to whether the tenant sufficiently served the landlord with a notice to end tenancy. A notice to end tenancy is to be served to the other party in one of the ways permitted under section 88 of the Act. Under section 88 and the

Residential Tenancy Regulations, email is a permissible method of service where a party consents or agrees to be served with a document by email.

The tenancy agreement, created in June 2019, does contain the landlord's email address next to the landlord's telephone number, but there is no indication in the tenancy agreement that the landlord is consenting to being served with a document by email.

Although I do not see evidence pointing to the landlord giving written consent to be served by email, I find the landlord did not satisfy me that the loss of rent for November 2022 is due to receiving a notice to end tenancy via email. The reason I make this finding is because the landlord did in fact act and rely upon the tenant's emailed notice immediately upon receiving it by advertising the rental unit as being available for November 1, 2022 and showing the rental unit to prospective tenants in October 2022 without having received a notice to end tenancy from the tenant in any other way. Therefore, I deem the landlord to have received the tenant's notice to end tenancy pursuant to the authority afforded me under section 71 of the Act. Section 71(2)(c) of the Act provides that I may order:

> (c)that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

The landlord also attributed the inability to re-rent the unit for November 2022 due to the appearance of the rental unit while it was being shown to prospective tenants. The tenant describing the rental unit as being in a condition one would expect when preparing to move and storing his expensive bicycle in the rental unit.

Section 32(2) of the Act requires that a tenant maintain the rental unit to "reasonable health, cleanliness and sanitary standards". I reviewed the landlord photographs that were apparently taken during the tenancy, as they include the tenant's possessions. It appears the rental unit is somewhat cluttered but I do not see sufficient evidence to conclude the rental unit was not reasonably healthy, clean or sanitary. Also, I am of the view that a prospective tenant would expect to see a rental unit this is still occupied by the outgoing tenant to be in a state consistent with preparing to move. Nor, do I view the storage of a bicycle in a rental unit as a deterrent to a prospective tenant as an incoming tenant would expect the bicycle to be removed when their tenancy starts. The landlord's description of a prospective tenant taking the position the rental unit did not look like a million dollar property is an opinion not supported by evidence and could also be related to the landlord's new rental rate of over $2700.00 per month. Therefore, I do

not award the landlord unpaid rent due to the tenant's failure to maintain the rental unit so that it is reasonably healthy, clean and sanitary.

For the reasons provided above, I deny the landlord's claim for unpaid rent and I dismiss the landlord's application.

Given both parties were unsuccessful in their respective applications, I make no award for recovery of the filing fee to either party.

Having dismissed the landlord's claim for unpaid rent, and the landlord is still holding the tenant's security deposit and more than 15 days have passed since the tenancy has ended, in keeping with Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit, plus accrued interest, to the tenant.

I calculate the accrued interest on the security deposit to be $14.76 as of today's date.

Provided to the tenant with this decision is a Monetary Order in the sum of $1,114.76 to serve and enforce upon the landlord.

Conclusion

The claims of both parties have been dismissed. To dispose of the security deposit, I have ordered that it be returned to the tenant, with interest, in the sum of $1,114.76. A Monetary Order is provided to the tenant with this decision in that amount to serve and enforce upon the landlord.

The landlord's claim for damage to the rental unit was withdrawn, without prejudice, and the landlord is at liberty to file another Application for Dispute Resolution against the tenant if he so choses.

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: September 08, 2023

Residential Tenancy Branch