Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, O, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for damage or loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; an other remedy in accordance with the *Act*; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Issue

The tenant's representative submitted that the tenant was unable to attend today because he had a class to attend. The tenant's representative applied for an adjournment of the hearing on the tenant's behalf. The landlord acknowledged she had been contacted by the tenant in advance by mail to request an adjournment prior to the hearing however she opposed any adjournment of this matter.

Rule 7.9 of the Dispute Resolution Rules of Procedure ("Rules") provide the factors that I should take into account in considering a request for an adjournment;

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*

- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Rule 7.11 of the Rules are relevant to the tenant's adjournment application. Rule 7.11 states that, if the arbitrator determines that an adjournment should not be granted, the dispute resolution hearing will proceed as scheduled. When a request for adjournment is refused, reasons for refusing the request will be provided in the written decision. In this case, I found that an adjournment should not be granted and I provide the reasons for refusing the request for an adjournment below.

The tenant's application for an adjournment was opposed by the landlord who noted that her own application as well as the tenant's applications had been pending since August, September and October 2015. She testified that any attempts to resolve this matter outside of the dispute resolution process have failed. Further, she testified that she took time off work to attend this hearing. The landlord also testified that the tenant was aware of the date of this hearing well before his school schedule was set and could have taken a variety of actions to address this scheduling conflict at an earlier date.

The tenant's representative did not provide much argument in support of an adjournment. He testified only that the tenant was in class, clarifying that the tenant had no exam or other specific reason for being unable to attend the hearing. The tenant's representative indicated he was familiar with the tenant's materials submitted for this hearing and that he was prepared to proceed on behalf of the tenant, if necessary.

I note that the tenant made extensive written and documentary submissions with respect to his applications. Given all of these circumstances, I do not find that the tenant is prejudiced by the refusal of an adjournment application. He took advantage of his ample opportunity to submit documentary materials. He sent a representative who advises he was well acquainted with the tenant's claim. I do not find that a delay of this hearing will be to anyone's benefit. I find that no one is prejudiced by the hearing proceeding.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss?
Is the landlord entitled to retain all or a portion of the tenant's security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to the return of all or a portion of her security deposit?
Is the tenant entitled to any other remedy in accordance with the Act?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on February 26, 2013 as a 6 month term tenancy and was continued on 6 month consecutive terms until the end of the tenancy on July 31, 2015. The rental amount of $1350.00 was payable on the first of each month. The landlord continues to hold a $675.00 security deposit paid on February 26, 2013. The tenant vacated the rental unit on July 31, 2015. At that time, a condition inspection was done with both landlord and tenant present.

Landlord's Application: A condition inspection report was completed by the landlord and signed by the tenant. The condition inspection report indicated that the condition of the unit was clean and undamaged as it was at move-in. The report indicated that the tenant returned keys and a parking remote at the end of the condition inspection. The condition inspection report is signed by both parties. The landlord testified that, when she attended the residence later that evening to clean, she discovered a large patch over a significant hole in the balcony floor. She submitted photographic evidence of the damage. It showed that while it appeared to be a patch of the surface of the balcony, on further inspection, it was a large burn mark and hole through the patio floor. She provided undisputed sworn testimony that, when she was in the rental unit earlier for the inspection, there was a bag over that spot that was only removed by the tenants as the landlords exited the rental unit.

The landlord submitted correspondence from the strata corporation indicating that full repair of the damaged balcony floor was necessary. Their letter dated stated that an inspection was done on August 4, 2015. The letter stated that a patch, soft to the touch close to the railings on the south east of the balcony had been welded and that "[after] opening the membrane we found a burned area 7" radius. Due the fact that the damages [is] more than 3/8" on the plywood sheet floor, this has to be treated as structural issue. On a later date, quotes were provided ranging from $658.14 to $2543.60.

The tenant's representative testified that while both he and the tenant were aware of the hole in the balcony floor, he submitted that the damage had "been there for quite some time" and the tenant had paid approximately $1000.00 to have the hole repaired on an earlier date. He submitted, on behalf of the tenant that the hole was repaired sufficiently for the tenant's part. He testified that the landlord had not been advised of the damage when it occurred. He testified that the landlord was also not notified of the damage at move-out.

The landlord testified that the tenant did not submit the final amount due on the utilities bill. The tenant's representative agreed that the tenant was responsible for paying the utilities while residing in the rental unit. The landlord submitted a copy of a utility bill with a 2 month period of June 20 to August 20, 2015 in the amount of $25.00. She requested the tenant pay 41 of the 60 days on the bill to encompass the period of time until their move out on July 31, 2015.

Tenant's Application: The tenant's representative testified, referring to the materials submitted by the tenant. He testified that the tenant sought to be compensated for the payment of violation tickets issued by the strata council at the residential premises. The tenant provided receipts for payment totalling $500.00 and letters from the strata documenting numerous letters of warning to the tenant as well as four violation letters indicating a fine had been levied against the tenant. One of those notices was with respect to an open fire on the balcony of the rental unit.

The tenant's representative testified that the tenant was not aware of updates to the strata bylaws with respect to parking when he received his first violation ticket regarding visitor parking. The parties agreed that the tenant had been provided with a copy of the strata by-laws when the tenant moved in to the rental unit. However, the landlord conceded that when changes were made to the parking by-laws, she did not immediately provide the new by-laws to the tenant. Both parties present at this hearing agreed that the tenant paid half of this violation and the landlord paid the other half, by mutual agreement.

The tenant's representative testified that the tenant was not aware of the current by-laws with respect to parking when he received his second violation ticket regarding parking. The landlord submitted that the tenant was well aware of the new parking by-laws when he received his second ticket and that the ticket did not actually relate to a by-law that had been changed. The tenant's representative did not argue this point.

The tenant's representative testified that the tenant was not aware that charcoal barbeques were not allowed until that portion of the by-laws was highlighted by the landlord for their information. The tenant's representative stated that, at the outset of the tenancy the landlord indicated the tenant could have a barbeque but did not clarify that charcoal was not permitted by the strata. Both parties agreed that the tenant had a copy of the by-laws and his representative testified that they "must have missed it" or not read closely enough, relying on what the landlord told them.

The tenant's representative testified that the tenant sought to recover half of the last two months of tenancy (June and July 2015) totalling $2700.00 as well as half of the cost of a trip to China at $1468.90. The tenant's representative testified, referring to the documents submitted by the tenant, that the tenant was very bothered by the landlord's angry behaviour. The tenant's representative testified that, during these months, the landlord emailed extensively and contacted the tenant regularly. The tenant submitted copies of emails where the landlord provides notice that she is going to show the suite or sought to discuss end of tenancy matters. The landlord disputed the claim by the tenant that she harassed the tenant indicating she was merely prepare for the end of the tenancy and, prior to that, dealing with a variety of complaint letters and violation notices from the strata corporation. The landlord submitted proof in documentary evidence that she appealed each violation ticket received by the tenant, either formally or by advocating on behalf of the tenant to the strata.

The tenant's representative testified that the tenant needed to go to China to see his mother and his psychiatrist; that the tenant goes to China fairly regularly when he is under stress, for example receives unsatisfactory grades or has an argument with a friend. The tenant's representative also testified that the tenant's stress had been compounded with family difficulties at the same time this tenancy was ending. The landlord submitted she believes that the tenant's visit China soon was coincidental to the tenancy issues, that the trip was planned beforehand and that she should not be responsible for such costs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Landlord's Application: The landlord provided photographic and documentary proof of the damage to the rental unit balcony at the end of this tenancy. The landlord's testimony regarding the damage was undisputed and the tenant's representative did not deny the damage or dispute that it was done by the tenant. It is unfortunate that the tenant chose not to advise the landlord and owner of the property of this damage either at the time that it occurred or at the end of the tenancy. The landlord provided evidence that she was required to pay for repairs by the strata corporation at the residential premises. She submitted evidence of the cost of those repairs.

Residential Tenancy Policy Guideline No. 1 provides that,

> *If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.*

Section 32 of the *Residential Tenancy Act* provides that,

> ***32*** *(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*

There is no dispute that the tenant or a person he permitted on the property caused this damage. It is evident, from the materials submitted, that this damage is beyond mere wear and tear. The tenant did not return the balcony of this unit to its original condition. He attempted to

cover or “repair” this fire damage on the balcony. I accept the landlord’s submission that this repair was likely to cover the damage as opposed to effectively repair the damage. I find the landlord, in these circumstances, had no option but to make repairs to the balcony to comply with the requirements of the strata corporation.

In the letters to the landlord regarding this damage, the agent for the strata described the damage as “structural” and the repaired for a total amount of **$3842.44**. She also sought to recover the cost of an investigation and quote preparation in the amount of 131.25. I find that the landlord is entitled to recover these costs.

The parties agreed that the tenant is responsible for an outstanding utility bill with a 2 month period of June 20 to July 31, 2015 in the amount of $17.00. (41 days of 60 at $25.00)

I find that the landlord is entitled to be compensated as follows,

Item	**Amount**
Balcony damage, repair	**$3842.44**
Quote prior to repair	131.25
Cost of outstanding utility bill	17.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award to Landlord	**$3365.69**

Tenant’s Application: Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant sought to be compensated for the payment of violation tickets issued by the strata council at the residential premises. The tenant provided receipts for payment totalling $500.00 showing his loss however the numerous letters from the strata documenting violations and the correspondence with the landlord show that the tenant should have been aware of the strata by-laws and is responsible for his actions in breaching those by-laws. The landlord made efforts to minimize the loss to the tenant however the tenant is wholly responsible for these fines.

The tenant’s application to recover half of the last two months of tenancy (June and July 2015) totalling $2700.00 as well as half of the cost of a trip to China at $1468.90 is dismissed. The

tenant provided insufficient evidence to support the claim that the landlord harassed him or affected him to the point that he was either unable to enjoy his residence and/or that he had to fly to China. The tenant's representative stated that the tenant regularly flies to China. The tenant's representative stated that the tenant did not reside in the unit for the entirety of his final two months as he was in China although his belongings remained in the residence. I do not find that the tenant is entitled to any portion of the costs of this flight. I find that the tenant is responsible to pay his full rent for the months prior to move-out.

As indicated, I find the landlord is entitled to a monetary order in the amount of $2066.85. I find the tenant is not entitled to any monetary award.

Conclusion

I issue a monetary order to the landlord in the amount of **$3365.69**.

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

I dismiss the tenant's application in its entirety.

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: January 29, 2016

Residential Tenancy Branch