Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

These hearings were convened by conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on May 24, 2016 for a Monetary Order for: damage to the rental unit; unpaid rent; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; recovery of the filing fee; and to serve documents in a manner not prescribed by the Act.

The first hearing took place on November 17, 2016 and was attended by both parties. During that hearing, the Tenant confirmed personal service of the Landlord's Application. However, that hearing was adjourned due to issues regarding the service of evidence. The full reasons for the adjournment are detailed in my Interim Decision dated November 17, 2016.

The parties appeared for the reconvened hearing and provided affirmed testimony during the proceedings. At the reconvened hearing, the Tenant confirmed receipt of the Landlord's updated and numbered evidence package, and the Landlord confirmed receipt of the Tenant's rebuttal evidence. The Landlord had provided an additional six pages of evidence consisting of bank records and emails for this hearing. However, the Landlord confirmed that he had not served a copy of this to the Tenant prior to the reconvened hearing. As this evidence was not before the Tenant, I declined to consider that evidence. However, I did not bar the Landlord from providing it into oral testimony.

The Landlord also confirmed that his Application to serve documents in a manner not prescribed by the Act, denoted as tick box SS on the Application, was a clerical mistake. Therefore, I dismissed this portion of the Landlord's Application.

The hearing process was explained and no questions were asked about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. While I have considered the parties' extensive evidence provided prior to and during the proceedings, I have only documented that evidence which pertains to the issues to be

decided. I also noted that the parties had exchanged evidence regarding allegations made by the Tenant of breaches by the Landlord in this tenancy. However, I did not deal with the Tenant's claims as they are not issues before me.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and loss of rent?
- Is the Landlord entitled to damages to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The parties agreed that they signed a written tenancy agreement on December 10, 2013 for a fixed term of one year which then continued on a month to month basis thereafter. The Tenant paid the Landlord a security deposit of $600.00 at the start of the tenancy and rent in the amount of $1,200.00 was payable on the first day of each month. The rent was then increased to $1,300.00 during the tenancy. The Landlord and Tenant completed a move-in Condition Inspection Report (the "CIR") on December 10, 2013, which was completed as a record on the front page of the tenancy agreement provided into evidence.

The Landlord testified that the Tenant owed him unpaid rent for the month of August as well as loss of rent for September 2015. The Landlord testified that the Tenant emailed him on July 31, 2015 explaining that she was going to be moving out of the rental unit on August 31, 2015. The email stated:

> *"After much thought, and searching for a solution I have decided to move. This is my official notice, the property at [rental unit] will be clean and vacant on August 31, or if you can rent sooner on August 15th…"*
>
> [Reproduced as written]

The Landlord argued that the Tenant was not allowed to give notice to end her tenancy by email as the Act prohibited this but acknowledged that he did receive the Tenant's above email on July 31, 2015. The Landlord testified that the he doubted whether the Tenant was going to follow through on the notice because the Tenant had previously given notice on July 6, 2015 ending the tenancy but had then recanted that notice. The Tenant testified that she is also a landlord and knows that because she provided the Landlord with the one month's notice pursuant to the Act, the Landlord was not eligible to claim for any loss after the Tenant's notice to end tenancy expired on August

31, 2015. The Tenant confirmed that she vacated the rental unit on August 15, 2016 and left the keys at the rent unit and did not provide the Landlord with a forwarding address in writing.

The Tenant referred to the Landlord's email evidence after she had sent him the July 31, 2015 email in which the Landlord writes that he is in the process of looking for a new renter. The Tenant also provided email correspondence with the Landlord as evidence that the Landlord started the process of finding new tenants. Therefore, this was evidence the Landlord clearly knew the Tenant was moving out pursuant to the notice.

The Tenant acknowledged that she did not pay rent for August 31, 2015 because she wanted to use her security deposit to pay for the time she occupied the rental unit. The Tenant submitted that she was not responsible for paying rent after August 15, 2015 because the Landlord had plenty of opportunity to re-rent the unit for August 15, 2015 but denied renters wanting to rent it out for that date.

The Tenant stated that she had continual contact with the Landlord and his agent throughout this tenancy by email. However, the Landlord made no attempt to contact the Tenant regarding completion of the move-out CIR and give her an opportunity to go through the damages being claimed by the Landlord.

The Landlord confirmed that he had not completed a move-out CIR at the end of the tenancy and did not make any attempts to contact the Tenant regarding this because she had left the rental unit without providing a forwarding address in writing.

The Landlord testified that the Tenant had caused damage to two of the blinds in the rental unit. The Landlord referred to printed photographs which show a tear to one of the blinds and a broken slat in the other blind which the Tenant had taped using nurse's tape. The Landlord claims $323.98 for the replacement cost of the two damaged blinds and $134.99 for the replacement cost of a third blind which he had to replace to match the two damaged blinds. The Landlord provided invoice evidence to reflect the costs being claimed.

The Tenant stated that the damage to the blinds the Landlord was testifying to was present at the start of the tenancy. The Tenant submitted that the move-in CIR did not show or document the state of the blinds at the start of the tenancy and only referred to drapes which were also supplied in this tenancy.
The Tenant stated that the blinds had a considerable amount of wear and tear to them before she took occupancy and they were already fragile and continued to weaken under the sun. The Tenant testified that one of the blind slats was broken when she

moved in to the rental unit and in an effort to maintain the integrity of the remaining blinds and the crack she taped it using nurse's tape. The Tenant submitted that the slats in the blinds can be replaced individually.

The Landlord denied this referring me to the photographs showing the damage to the blinds. The Landlord explained that the attachment went through the blinds and therefore could not be individually replaced. The Landlord testified that the blinds were six years of age.

The Tenant testified that the she attended a store who sold similar blinds to the ones in the rental unit and they informed her that the slats could not be replaced from the top but the blinds could be opened at the bottom and the slats could be replaced in that way.

The Landlord claims $1,150.00 for repair and painting costs for damage to the bedroom wall and a dent in the metal corner beading of the wall. The Landlord provided two photographs of the damage into evidence and an estimate for the cost of prepping and painting the walls in the pictures provided by the Landlord.

The Tenant stated that with respect to the hole in the bedroom wall this damage was already present at the start of the tenancy; however, it was not noticed because the damage resulted from the door knob continually banged into the wall as there was no door stop there. The Tenant explained that when they inspected the rental unit at the start of the tenancy the door was open and therefore this damage was not visible.

The Landlord testified that at the end of the tenancy, the Tenant's pet had caused extensive staining to the five year old plush carpet installed in the rental unit. The Landlord explained that he become aware that the Tenant had the carpets professionally cleaned on August 24, 2016 before she moved out. The Landlord stated that he contacted the carpet cleaning company regarding the cleaning they had done for the Tenant. The Landlord obtained a letter from that company which stating that despite a "truck mounted steam clean and extraction of the carpets" paid for by the Tenant, they still found the carpets to be stained and not in good condition. The cleaning company continues to write that in their professional opinion the carpet needs to be replaced.

The Landlord stated that the Tenant had two dogs at the rental unit and explained the areas damaged were on one of the steps, an area of the kitchen, and there was a rip in the carpet by the floor vent. The Landlord referred to photographs he had provided on a USB showing staining to the carpet.

The Landlord was unable to provide the exact area of the carpet that was damaged and testified that the carpet was six years old. The Landlord provided an estimate for the replacement cost of the carpet in the amount of $7,027.06. The Landlord stated that he does not know how to reduce the amount to reflect the age and the areas damaged.

The Tenant stated that when she viewed the rental unit, the carpets were in bad shape and the Landlord's wife agreed to have them steam cleaned prior to occupancy which they were. The Tenant referred to the move in CIR of the tenancy agreement and stated that this was the reason why the Landlord had put an asterisk next to the tick mark in the carpet section.

The Tenant testified that after they were steam cleaned by the Landlord this seemed to have gotten rid of the stains present before she moved in. However, after a week the stains started to resurface again. The Tenant explained that she did verbally inform the Landlord of this but the Landlord refused to do anything about them. The Tenant testified that she had her daughter and boyfriend separately come to stay with her for a short time and they too had a dog, but otherwise she only had one pet in the rental unit.

The Tenant admitted to one stain which was roughly eight inches by eight inches in size which she said the carpet cleaning company could not remove. In relation to the rip in the carpet by the air vent, the Tenant testified that when she was vacuuming the carpet at this area, the carpet lifted up and she saw that along the rip lines there was carpet tape that traversed the length of the air vent. The Tenant suggested that this was because the rip was present at the start of the tenancy and had been repaired beforehand.

The Landlord stated that the asterisk in the carpet section of the move-in CIR referred to a large stain in the bedroom for which he was not making a claim for. The Landlord referred me to the section of the move-in CIR which stated "Make a note of any chips, stains or burns that are found in the suite". Under this section the parties wrote four items of damage: crack to the sliding door; damage to the countertop in dining room; crack on 1 burner; burn on countertop in kitchen. The Landlord then referred to the second page of the tenancy agreement which continues to note damage in the rental unit at the start of the tenancy which states: Stain in large spare bedroom; latch on sliding door broken; no key for basement door; hole in drywall (entrance).

The Landlord denied that the carpets were professional cleaning at the request of the Tenant prior to the tenancy and submitted that this was done as per their requirement under the Act. The Landlord denied that the Tenant had any conversation with him or

his agent regarding staining appearing a week into the tenancy and stated that if this was the case he would have responded and dealt with it accordingly.

Analysis

Claim for Unpaid and Lost Rent

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement. Section 21 of the Act does not permit a tenant to use a security deposit as rent unless the landlord consents in writing. Policy Guideline 3 provides guidance on claims for unpaid and lost rent; in particular it states that as a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Section 53(3) of the Act states that a notice to end tenancy with an incorrect vacancy date self-corrects to the date that complies with the Act.

Based on the foregoing, I find the Tenant provided her notice to end tenancy by email on July 31, 2015 to the Landlord. The Act does not allow service of documents by email but an Arbitrator may consider a document has been served sufficiently for the purpose of the Act if there is other evidence to suggest it was received by the intended respondent. The intent and purpose of the service requirements of the Act is to ensure a party receives a document. In this case, I am satisfied the Landlord was served with the Tenant's notice because the Landlord acknowledged in this hearing receipt of the Tenant's email on July 31, 2015 and the responded to that email on the same day.

Therefore, the earliest time the Tenant could have ended the tenancy would have been August 31, 2015 which allowed for the correct time period of one full rental months of notice. As a result, the Tenant was obligated to pay rent for all of August 2015 and did not have any permission to pay rent through her security deposit. It is not possible for a tenant to end the tenancy in the middle of the month and then shift the burden to the landlord to re-rent it for a period for which the tenant was responsible to pay rent for.

In the same respect, the Landlord has no claim for September 2015 rent as the Tenant ended the tenancy correctly up until August 31, 2015 at which point the tenant's requirement to pay rent would have ceased. A landlord does not have to accept a Tenant's notice to end tenancy. Rather when a tenant serves such a notice to end a tenancy, the landlord would have remedy under the Act if the tenant continued to over hold the rental unit after the vacancy date of that notice.

In this case, the Landlord started the process of finding a new tenant after he got the Tenant's written notice and any failure of the landlord to find a new renter for September 2015 rests with the Landlord and not the Tenant. Accordingly, I grant the Landlord August 2015 unpaid rent in the amount of **$1,300.00** and deny the request for loss of rent for September 2015 as the Tenant is not responsible for this amount.

With respect to the Landlord's claim for damages to the rental unit, Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

In this case, I find the Landlord failed to complete a move-out CIR which would have documented the state of the rental unit at the end of the tenancy. The Landlord was required in accordance with the *Residential Tenancy Regulation* to arrange this with the Tenant for a suitable date and time. I accept the parties communicated by email through this tenancy and I find the Landlord could have made efforts to arrange this by email with the Tenant. In the absence of a move-out CIR, I am only able to rely on the parties' other evidence they have provided before me to make my findings.

Claim for Blind Replacement

I find the Landlord failed to document the state of the blinds at the start of the tenancy in the move-in CIR. Section 20 of the *Residential Tenancy Regulation* provides for the standard information that is required on a CIR. In this case, I find the move-in CIR fails to meet that standard, and in any case fails to provide sufficient information as to the state or existence of the blinds at the start of the tenancy. Therefore, I am unable to discount the Tenant's oral evidence that the blinds were in a fragile and damaged state at the start of the tenancy.

In addition, the Landlord testified that the blinds were six years old. Policy Guideline 40 provides for the useful life of building elements in residential tenancies. In particular, it states that the useful life of blinds is ten years. Therefore, I find the Tenant's submission that the condition referenced by the Landlord in his printed photographs was due to reasonable wear and tear as reflected by the age of the blinds, to be plausible.

I find the Landlord failed to provide sufficient evidence to show the damage he eluded to in the photographs was (a) not in existence at the start of the tenancy, (b) that it went beyond that of reasonable wear and tear, and (c) the slats showing alleged damaged could not have been replaced; this could have been proved through other evidence,

such as an expert report, which was not before me. As a result, I find the Landlord has failed to meet the burden of proof and I deny this portion of the Landlord's claim.

Claim for Painting and Wall Damage

I do not accept the Tenant's evidence that the hole and dent caused to the bedroom wall was present at the start of the tenancy. This damage was certainly not documented on the move-in CIR which rebuts this claim. The Tenant had a duty to report to the Landlord any damage to the rental unit that had not been documented in the move-in CIR and I find it unlikely that the Tenant did not notice this during the tenancy and failed to report this to the Landlord for repair with a door stop. If the Tenant observed that the damage was emanating from the lack of a door stop, the Tenant had a duty to report this to the Landlord to mitigate the subsequent damage.

With respect, to the damage to the corner of the wall as evidenced by the Landlord's two photographs showing this damage, I find this is not consistent with damage, but rather reasonable wear and tear. In residential tenancies, it is not reasonable to expect that a tenant is going to return a rental unit at the end of the tenancy in pristine condition because the Act contemplates that there is going to be reasonable wear and tear during the tenancy and during the moving in and moving out process. Therefore, I do not accept that this is damage to the corner of the wall.

As I find the Tenant is responsible for the hole in the wall, I turn my mind to the amount to be awarded to the Landlord. I find the invoice evidence the Landlord has provided for the repair and repainting of the rental unit walls of $1,150.00 is excessive. The Landlord provided evidence of damage limited to one hole in the wall of the rental unit. Having examined the Tenant's extensive photographic evidence of the rental unit, I am unable to see any other damage to the rental unit walls that would justify such a huge expense claimed. Furthermore, I find the Landlord's invoice evidence does not contain sufficient detail to show the extent of work that is to be undertaken and how this is consistent with the Landlord's evidence.

Policy Guideline 16 provides guidance on compensation for damage or loss. In particular, it states that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward: "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. Based on the foregoing, I award the Landlord a nominal amount of **$200.00** for the damage to the bedroom wall which the Tenant is responsible for.

Claim for Carpet Replacement

Having considered the evidence of both parties in this portion of the claim, I find the Tenant was provided clean carpets at the start of the tenancy that had been professionally cleaned. I accept the parties documented the one stain that was not part of the Landlord's claim and I find that the state and condition of the carpet before the tenancy started and prior to them being cleaned is irrelevant.

I find it difficult to believe that stains started to appear in the carpet after one week of the tenancy as testified to by the Tenant. If this had been the case, then I would have expected the Tenant to have taken more of a diligent approach in documenting the staining and pursuing the Landlord for remedy to this. There is insufficient evidence the Landlord was put on notice of such staining as the Landlord disputed this.

I also find it plausible that the staining shown in the Landlord's photographic evidence is more consistent with pet damage for which the Tenant had a dog and had allowed other dogs of guests staying with the Tenant for short periods of time. I find the Landlord's report from the carpet cleaning company the most convincing and compelling evidence of staining caused to the carpet that could not be removed causing permanent damage that required replacement. I find the Tenant's evidence is not sufficient to rebut the Landlord's evidence which comprises of independent and corroborative evidence.

In addition, I place doubt on the Tenant's submission that the rip in the carpet had been caused prior to her occupancy. The tearing of a carpet is a serious issue in a tenancy and therefore, if a tenant came upon such damage, they have a duty to report this and allow the landlord to look into the matter. In this case, I find the Tenant did not purse this course of action. Accordingly, I find the Tenant is responsible for the replacement cost of the carpet, irrespective of whether the Landlord replaced it or not as the Landlord is entitled to the value of the loss incurred.

In determining the replacement cost to be awarded to the Landlord for the carpet, I must take into consideration the useful life of carpets as detailed in Policy Guideline 11 which determines this to be ten years. I find the photographic evidence provided by the parties show the carpet was in good condition. The Tenant did not provide a preponderance of evidence to dispute the Landlord's assessment of the age of the carpet.
Therefore, I am satisfied by the Landlord's oral testimony that the carpet was six years of age at the time the tenancy ended because this is consistent with the photographic evidence and does not indicate that it is any older. Based on the foregoing, I award the

Landlord 40% of the total costs claimed for the carpet replacement in the amount of **$2,810.82** (four years of useful life left from $7,027.06).

As the Landlord has been partially successful in the claim, pursuant to Section 72(1) of the Act the Landlord is also entitled to the **$100.00** filing fee. Therefore, the total amount awarded to the Landlord is **$4,410.82** ($1,300.00 + $2,810.82 + $200.00 + $100.00).

As the Landlord already holds $600.00 in the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **$3,810.82**. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. The Tenant may be liable for any enforcement costs incurred by the Landlord. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance of $3,810.82. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 17, 2017

Residential Tenancy Branch