Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent and losses associated to cleaning and damage; and, a request to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

1. Time limit to file Application for Dispute Resolution

The landlord filed this Application for Dispute Resolution on March 17, 2017 which is more than two years after the tenancy ended. However, I am satisfied the landlord filed within the time limit permitted under section 60(3) of the Act. Section 60(3) provides as follows:

> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded

The tenant had filed an Application for Dispute Resolution against the landlord for return of double the security deposit on January 31, 2017 which was within two years of the tenancy ending (file number referenced on cover page of this decision). The tenant's application was heard and concluded on March 20, 2017.

Since the landlord filed his Application for Dispute Resolution before the tenant's application was concluded, I find the landlord met the time limit imposed by section 60(3) of the Act and I continued to hear the landlord's claims against the tenant.

2. Service of evidence and accessibility of digital evidence

The tenant testified that she sent evidence to the landlord via registered mail on two occasions: July 28, 2017 and August 5, 2017. The landlord stated he did not receive the registered mail. The tenant provided registered mail tracking numbers as proof of service and the service address she used which the landlord confirmed to be accurate. A search of the registered mail tracking numbers showed that the registered mail package remained unclaimed. The landlord acknowledged that he had been working out of town until very recently and ordinarily his daughter collects the mail. In this case, I was satisfied the tenant served her evidence upon the landlord in a manner that complies with the Act and I have considered her evidence. With a view to fairness considering the landlord had not seen the tenant's evidence, the tenant was asked to describe the evidence she relies upon in making her submissions.

The landlord had served digital evidence to the tenant and the Residential Tenancy Branch which was received after the deadline for serving an applicant's evidence. The landlord did not confirmed with the tenant that she could view the digital evidence even though he indicated he would in submitted the Digital Evidence Details worksheet. The tenant stated that she received the USB stick but could not view it. I did not consider the digital evidence further as a party intending to rely upon digital evidence must ensure the other party can see/hear the digital evidence before the hearing as required under Rule 3.10 of the Rules of Procedure. Rule 3.10 provides, in part:

> The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.
>
> If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As far as documentary evidence, the landlord testified that he had sent documentary evidence to the tenant with his hearing package. The tenant confirmed that she received a Monetary Order worksheet, bills relating to damage, and a type-written letter of a person purporting to be an incoming tenant. I noted that I did not have such

documentation in the file before me. The landlord suggested that he may have submitted the evidence to the Residential Tenancy Branch under the file number associated with the tenant's Application for Dispute Resolution. Upon review of the Branch's records I noted that the documentation described by the parties appears to have been submitted under the tenant's Application for Dispute Resolution. Since both parties were prepared to reference the above described documents I have accessed the landlord's evidence that was filed under the tenant's Application for Dispute Resolution and considered it in making this decision. .

3. Amendment of landlord's claim

In filing this Application for Dispute Resolution the landlord indicated he was seeking a Monetary Order of $2,890.00. I noted that a detailed monetary calculation was not in the file before me. The tenant stated that there was a calculation provided in the documents served upon her, totalling $2,715.50, which is the sum of loss of rent of $2,200.00; cleaning charges of $125.00 and $390.50 for drywall repairs. The landlord confirmed that he seeks to recover $2,715.00 from the tenant and I amended the landlord's Application with consent to reflect a claim of $2,715.50.

By way of the tenant's Application for Dispute Resolution referred to above, the tenant was awarded return of double the security deposit and provided a Monetary Order. Accordingly, I find the disposition of the security deposit has already been heard and decided upon. A decision and Order previously issued is final and binding and cannot be changed by way of this proceeding and decision. Accordingly, the previous decision and Monetary Order remain enforceable, meaning the security deposit is no longer available for the landlord to claim against. Rather, I may only consider the landlord's entitlement to compensation from the tenant and provide the landlord with a Monetary Order for the amount I determine the landlord is entitled to receive from the tenant.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation from the tenant in the amounts claimed, as amended?

Background and Evidence

The tenancy started on April 1, 2014 on a month to month basis. The tenant was required to pay rent of $1,100.00 on the first day of every month. The rental unit is a basement suite and the landlord resides in the upper unit.

The landlord did not prepare a move-in inspection report. As for the move-out inspection, the landlord stated that he left it up to the tenant to approach him when she was ready for an inspection. The tenant stated that she waited for the landlord to come inspect the unit on February 1, 2015 and he did not show up at the unit and when she went up to his unit at approximately 9:30 p.m. to ask him to come do the inspection he declined.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses:

Loss of Rent: $2,200.00

The tenant gave the landlord a notice to end tenancy in January 2015. It is uncertain as to whether there was an effective date on the notice although the tenant stated that she thought she had until February 1, 2015 to vacate. The landlord advised the tenant that in a text message that he was accepting the end of the tenancy at the end of January 2015 but that she must vacate the unit by January 31, 2015.

The landlord claims that he lost two months of rent because the tenant did not vacate the rental unit on January 31, 2015. The landlord stated that he had a tenant set to move in and that the incoming tenant declined to continue with the tenancy because the rental unit was not vacant on January 31, 2015. The landlord testified that the tenant did not vacate until February 2, 2015. The landlord had a video and pictures of the tenant still moving out on February 1, 2015.

As evidence of the landlord's loss the landlord produced an unsigned type-written letter purportedly written by the incoming tenant on January 31, 2015. The document does not contain any contact information for the author. The landlord described the incoming tenant as a friend of a friend.

The tenant acknowledged that she moved out at 4:00 p.m. on the afternoon of February 1, 2015 and that it was later than expected due to a vehicle malfunction and snowfall that day. The tenant testified that the landlord did not communicate to her that anybody was waiting to move in and had he done so she could have moved her possessions outside to the road.

The tenant questioned whether the landlord lost rent for two months. The tenant testified that she drove by the property a few days after the tenancy ended an observed

two males moving into the rental unit. On February 5, 2015 the tenant and landlord exchanged text messages with respect to the tenant returning the keys to the rental unit. The landlord instructed her to put them in the mailbox and the landlord indicates he will be returning the security deposit to the tenant and makes no mention of losing a tenant. When she returned to the property on February 17, 2015 to remove the garden at the request of the landlord she saw the same two men she had seen moving in standing in the kitchen of the rental unit and a vehicle in the parking space ordinarily reserved for the basement suite tenants. Approximately a year later she drove by the property again and observed the same vehicle parked in the tenant parking area.

Wall damage: $390.50

The landlord alleged that the tenant's boyfriend punched a hole in the wall during the tenancy and it required repair, plus patching of nicks and scuffs and holes form hanging pictures. The rental unit had last been painted in 2014. The landlord produced a receipt demonstrating a repair of a 2 foot by 2 foot area and painting of the patched walls.

The tenant denied that her boyfriend punched a hole in the wall. The tenant pointed out that she was not afforded the opportunity to do a move-out inspection with the landlord to see the damages the landlord is describing. The tenant acknowledged that there was a 2 inch by 2 inch piece of wood that held a phone that she did not remove from the wall. The tenant testified that she filled and sanded the little nail holes from hanging pictures and asked for the matching paint from the landlord and he did not provide it to her.

Cleaning: $125.00

The landlord testified that his daughter spend 3 to 4 hours cleaning the rental unit and made a trip to the landfill to remove the tenant's abandoned possessions that he described as being: a bag of hot peppers, some toiletries, and odd and ends. The landlord described his daughter's cleaning efforts as being cleaning of the cupboards, window sills, and stove; and, vacuuming.

The tenant testified that she cleaned the rental unit impeccably and steam cleaned the carpets. The tenant acknowledged that she may have forgotten a bag of hot peppers at the property.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The landlord bears the burden of proof in this claim. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons.

Loss of Rent

As provided under section 45(1) of the Act, the effective date of the tenant's notice to end tenancy must be at least one full month after notice is given and be on the day before rent is due. Since the tenant pays rent on the first she is required to vacate the rental unit on by last day of the month. In this case, I heard that the tenant gave written notice to end tenancy in January 2015. Ending the tenancy on February 1, 2015 is not one the effective dates available to the tenant. The landlord sent a text message to the tenant on January 8, 2015 informing the tenant that she still needed written notice but that he was accepting that the tenancy would end at the end of the month which I interpret to mean January 31, 2015. The tenant's response was that she would give the landlord the written notice but she did not indicate the tenancy was to end on any other day. Based on these messages it is apparent to me that the end of the tenancy was to be January 31, 2015. Therefore, I find the tenant was obligated to vacate the rental unit by January 31, 2015 to avoid over-holding the rental unit.

The landlord testified that the tenant vacated the rental unit February 2, 2015. The tenant testified that she vacated on February 1, 2015. The landlord submitted that he has a video and pictures showing the tenant moving out on February 1, 2015. Therefore, I find the preponderance demonstrates that the tenant was occupying the rental unit until February 1, 2015.

Section 57 of the Act provides for what happens if a tenant does not vacate the rental unit by the end of the tenancy.

> (3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Pursuant to section 57(3) of the Act, I find the landlord entitled to compensation for the extra one day the tenant remained in occupation of the rental unit. I calculate one day of rent to be $35.48 ($1,100.00 /31 days).

As for the landlord's allegation that he suffered two full months of loss of rent due to the tenant's failure to vacate the rental unit by January 31, 2015 I find the landlord's unpersuasive. The tenant testified that she observed two men apparently moving in and residing in the rental unit and had a car parked in the tenant's parking area a few days after her tenancy ended; a couple of weeks after her tenancy ended; and, approximately one year after her tenancy ended. The landlord did not provide a copy of a tenancy agreement for the tenant that he alleges he lost due to the tenant's failure to vacate by January 31, 2015 or a copy of the tenancy agreement for the tenants that eventually did move in. Rather, the landlord relies upon an unsigned type-written letter from a person who did not provide any contact information and was not called to testify at the hearing. I find the unsigned letter in itself lacks veracity. Therefore, I find the landlord provided insufficient evidence to establish a loss equivalent to $2,200.00 due to a violation of the Act by the tenant.

In light of the above, I award the landlord $35.48 for over-holding.

Wall damage

I note that the invoice for wall repairs is addressed to a corporation and not the landlord, leaving me to question whether the landlord suffered a loss with respect to wall damage.

I was provided opposing testimony as to whether the tenant's boyfriend punched a hole in the wall. As provided under section 21 of the Residential Tenancy Regulations (the

regulations) a condition inspection report prepared in accordance with the Residential Tenancy Regulations is usually considered the best evidence of a condition of a rental unit. In order for the landlord to meet his obligations to perform a condition inspection with the tenant at the end of the tenancy, the landlord is first required to propose a date and time for the move-out inspection to the tenant. The tenant is not obligated to propose a date and time to the landlord. I find there is insufficient evidence that the landlord met his obligation to propose a date and time for the move out inspection to the tenant. In the absence of a move-out inspection report performed together I find the disputed verbal testimony does not satisfy me that the tenant is responsible for the damage alleged by the landlord.

As for nail holes from hanging pictures, as provided in Residential Tenancy Policy Guideline 1, a landlord should expect a reasonable number of holes from hanging artwork as being ordinary wear and tear. Under section 32 of the Act, reasonable wear and tear is not damage and a landlord may not seek compensation from a tenant for ordinary wear and tear.

For all of the above reasons, I dismiss the landlord's claim for wall damage and painting against the tenant.

Cleaning

Under section 32 of the Act a tenant is required to leave a rental unit vacant and "reasonably clean" at the end of the tenancy.

I was provided opposing testimony as to whether the tenant left the rental unit reasonably clean. I found the landlord's testimony not overly persuasive as the list of items he described as being left behind by the tenant did not sound worthy of a trip to the landfill and the landlord did not produce a receipt for the landfill dump fees. The tenant acknowledged that she left a bag of hot peppers behind. For that, I provide the landlord a nominal award of $1.00 to carry that to the garbage.

Filing fee and Monetary Order

Given the landlord's very limited success in this application I award the landlord partial recovery of the filing fee of $13.52 to bring the landlord's total award to $50.00.

With this decision I provide the landlord with a Monetary Order in the total amount of $50.00 to serve and enforce upon the tenant.

Conclusion

The landlord had limited success in this application and has been provided a Monetary Order for the sum of $50.00 to serve and enforce upon the tenant.

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: August 31, 2017

Residential Tenancy Branch