Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD SS

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act;* and
- an Order to serve documents in a different way than required by the *Act* pursuant to section 66 of the *Act*.

Both the tenants and landlord attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Tenant A.S. acknowledged that he had received a copy of the landlord's Application for Dispute Resolution and evidentiary package via email on approximately August 8, 2017. While not a recognized form of service under the *Act* the landlord had previously been given substituted service orders allowing service in this manner by an Arbitrator with the *Residential Tenancy Branch* on March 22, 2017 for tenant A.S., and on June 28, 2017 for tenant S.L. Based on these service orders the tenants are found to have been served in accordance with the *Act*.

Following opening remarks, the landlord asked to amend his Monetary Order from $3,820.63 to $4,000.63. He explained that he emailed a copy of this amendment to the *Residential Tenancy Branch* on the day of the hearing. As I am without a copy of this amendment, I decline to amend the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Can the landlord retain the tenants' security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Testimony was provided by both parties that the tenancy between the parties began on December 1, 2014 and ended on March 1, 2017. Rent was $1,150.00 and a security deposit of $575.00 continues to be held by the landlord. At the end of February 2016 tenant S.L. vacated the property, leaving tenant A.S. as the sole occupant.

The landlord explained that he sought a Monetary Order of $3,820.63. This was in reflection of the following items:

ITEM	**AMOUNT**
Unpaid Gas for January 2017	$193.74
Unpaid Hydro for January 2017	105.69
Unpaid Gas for February 2017	155.47
Unpaid Gas for March 2017	102.89
Cleaning (4 hours at $15.00)	60.00
Electrician	60.00
Replacement light bulbs	190.84
Damaged/Missing/Vandalized items	1,142.00
Removal of items from suite	190.00
Recovery of March 2017 rent	1,150.00
TOTAL =	$3,350.63

During the course of the hearing the landlord testified that the tenants had failed to pay the hydro and gas bills for the months of January, February and March 2017, with the

March gas bill representing the billing time period of February 6, 2017 to March 6, 2017. He said that the parties had an arrangement whereby the tenants would pay the difference in the gas and hydro bills if these bills were over $75.00 each per month. A copy of the tenancy agreement was submitted by the landlord to the hearing, showing this arrangement. The landlord explained that the tenants had simply failed to pay the amount due as per their tenancy agreement. Tenant A.S. acknowledged that these amounts remained unpaid but argued that landlord submitted unreasonable bills that were beyond the hydro and gas consumptions of a studio apartment.

In addition to the unpaid hydro and gas bills, the landlord said that the tenants had caused significant damage to the property. He explained that the damage was so extensive that a large number of repairs had to be made to the suite. As a witness during his hearing, the landlord called his repairman L.G. who testified to the extent of repairs required. The landlord and L.G. explained that “significant” electrical work was required in the suite, in particular to an overhead light, to a dryer that was broken and for general maintenance due to the “filthy” state that the landlord alleges the tenants left the suite.

The final portion of the landlord’s application concerns furniture that he explained was destroyed by the tenants during the tenancy and rent which he was unable to collect for March 2017 due to the extensive repairs that were required. He said that numerous items were left in the suite following the tenants’ departure from the rental unit and that these items required removal to the dump. He explained that the amount of debris left in the unit, along with the numerous repairs, made it impossible for him to re-rent the suite for March 2017.

The tenants strongly denied damaging any portion of the rental unit. The tenants explained that the rental unit was often subject to flooding when a heavy rain was present and they described water frequently entering the suite from the ceiling. The tenants acknowledged that furniture was ruined and some of it was removed from the suite. They continued by explaining that the furniture which was removed was very old furniture that resembled items which would be found in a junk store. Additionally, the tenants did not dispute that some items were left in the rental unit following their departure; however, they argued that the items which remained the suite were property of the landlord and therefore his responsibility.

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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

During the hearing the landlord explained that the tenants had failed to pay the hydro and gas bills for January, February and March 2017 with the March 2017 gas bill representing the time period of February 6, 2017 to March 6, 2017. The tenants acknowledged not paying these items but explained that the amounts sought by the landlord were above what one could reasonably be expected to be charged for usage in a studio sized suite. I do not find this argument persuasive. I find that the tenancy agreement signed by the parties along with copies of the bills submitted at the hearings show that the tenants had an obligation to pay these bills. The landlord is therefore entitled to the entire amount sought in his Monetary Order for the hydro and gas for the months of January, February.

As the tenant had vacated the suite by March 1st, 2017 the tenants shall be responsible for the time period running from February 6th, 2017 (start of billing cycle) to February 28th, 2017. The gas bill was $102.89 this time period representing 32 days. The tenants were in occupation of the unit for 26 days of this time period, so they are responsible to pay $83.60 (102.89/32 = 3.2 per day).

The second aspect of the landlord's application concerns damage to the rental unit, along with repairs that were required to the unit and items that were destroyed, removed or left in the suite. While the landlord has submitted some receipts for the work that was required in the rental unit and for the labour performed by him, by handyman L.G. and by a person (M.T.) hired to clean the suite, the landlord has failed to produce receipts or estimates from any retailers demonstrating the value of the items that he has classified as damaged, vanished and vandalized or for the fees related to the dumping of objects and the gas used for transportation.

Throughout the hearing the tenants maintained that many of these items were very old and were already well beyond their useful life. Furthermore, they submitted that many of these items were damaged as a result of the constant flooding to which the suite was subject. In particular, the tenants acknowledged that a light fixture had been damaged by flooding into their suite, and it was for this reason that they had removed it. The tenants testified that the items which were left in the suite were the landlord`s, and they disagreed with the landlord's submissions that items were abandoned in the rental unit.

I find, based on the testimony presented at the hearing, on the invoices submitted at the hearing by the landlord and on the written submissions, that the landlord is entitled to some monetary award related to the items listed above. Specifically, I find that some work was required in the rental unit following the tenants' departure and will award the landlord a return of the $60.00 amount paid to handyman, L.G. and the $60.00 for cleaner, M.T. I decline to award the landlord an award for the loss of furniture, or for the items deemed damaged or vandalized. I find the testimony of the tenants regarding the repeated flooding issues to be of great importance to this matter. The tenants explained in a very detailed manner that the suite was repeatedly subject to flooding and that the items which were broken or damaged as a result of this flooding, and the items which were abandoned were the landlord's own items. This testimony, coupled with the lack of receipts establishing loss for the value of items, leads me to decline compensation for this portion of the landlord's application.

The final aspect of the landlord's application concerns the loss of rent for March 2017. The landlord explained that significant repairs were required in the rental unit following the tenants' departure. He said that the repairs were so extensive that he was prevented from re-renting the suite. Little evidence was submitted to the hearing describing the efforts which were undertaken by the landlord to actually re-rent the suite following the departure of the tenants. No advertisements for the rental unit were submitted at the hearing, nor were submissions concerning the steps taken by the landlord to find a new tenant. For these reasons, I decline to award the landlord a monetary award for the loss of March 2017 rent.

The landlord has also applied to retain the tenants' security deposit.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security

deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find that the landlord applied for dispute resolution on March 15, 2017. The landlord is therefore within the 15 day requirement set out by the *Act*. Testimony was provided by both parties that no condition inspection was completed, none was schedule and the tenants did not provide their forwarding address to the landlord.

Section 36(2) reads as follows:

Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Testimony presented at the hearing demonstrated that both the tenants and the landlord had failed to provide information to one another in accordance with the *Act*.

Residential Tenancy Policy Guideline #17 explains, "In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss." As the landlord initially failed to perform a condition inspection with the tenants, the landlord is found to have initially breached the *Act* and his right to a return of the deposit is extinguished.

As the landlord was partially successful in his application, he may recover the filing fee from the tenants.

Conclusion

I issue a Monetary Order in the landlord's favour in the amount of $758.50 against the tenants based on the following:

Item	**Amount**
Unpaid January Gas	$193.74
Unpaid January Hydro	105.69
Unpaid February Gas	155.47
Unpaid March Gas	83.60
Cleaning by M.T.	60.00
Cleaning and Repairs by L.G.	60.00
Return of Filing Fee	100.00
Total =	$758.50

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: September 5, 2017

Residential Tenancy Branch