Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNDL MNRL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent, damage to the rental unit and other losses from this tenancy pursuant to section 67; and an authorization to recover the filing fee for this application from the tenant, 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. The tenant confirmed receipt of the landlord's Application for Dispute Resolution including Notice of Hearing by registered mail. The tenant submitted evidence; in response, the landlord confirmed receiving those evidentiary submissions. The tenant testified that she received the landlord's evidentiary materials by email; the tenant argued that the landlord did not comply with the Rules of Procedure in that she did not send the evidence in a manner required by the Act. However, after consideration of the parties' submissions, I find that the tenant was sufficiently served with the landlord's evidence in that it was sent in a timely manner that allowed the tenant to respond. The tenant acknowledged that she was able to access and review all of the materials prior to this hearing and that she had no further documentary submissions to make.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage and other loss as a result of this tenancy? Is the landlord entitled to recover the filing fee?

Background and Evidence

This tenancy began on August 10, 2017, with a rental amount of $1100.00 payable on the 15th of each month, as well as a monthly $50.00 payment to the landlord towards utilities. The parties agreed with each other on the terms of this tenancy, however no written tenancy agreement was created: the landlord testified that the tenant avoided signing a written agreement. The parties agreed that this tenancy was scheduled to end on or before April 30, 2018. The landlord continues to hold a security deposit in the amount of $550.00 and a pet damage deposit in the amount of $550.00 paid by the tenant at the outset of this tenancy. The tenant vacated the rental unit on April 28, 2018, (two days prior to the end date set by the parties for this tenancy).

The landlord testified that the basement rental unit occupied by the tenant was “like new” at the outset of this tenancy. She testified that the residential premises (a house) were built in 2008. The landlord testified that she purchased the property in July 2017, and the rental unit had been added just prior to her purchase of the property. The landlord was unable to provide the exact date of the addition to the home. The landlord did not create a move-in or move-out condition inspection report with respect to this tenancy; however, the landlord testified that she had written notes in a journal about the condition of the unit at the outset of the tenancy. She provided undisputed testimony that the tenant only identified three small issues at the start of the tenancy and those issues were addressed prior to move-in.

The landlord testified that it was not until she began showing the rental unit to prospective tenants, that she realized the extremely poor condition of the rental unit. She described the tenant as a hoarder and testified that all surfaces (floors, counters, etc.) were covered with the tenant’s belongings. She testified that she could not see the actual floors or counters because of the numerous belongings in the rental unit. The landlord testified that she showed the rental unit approximately four times while the tenant still resided in the unit but prospective tenants were discouraged by the condition of the unit. She testified that she was unable to re-rent the unit, even though she advertised the unit in March and April 2018.

The landlord testified that she did not advertise the rental unit in May 2018, because she became nervous that she would “end up renting to another problematic tenant.” The landlord testified that the unit was rented for June 1, 2018, without further advertising. The landlord sought to recover the unpaid April 2018, rent (acknowledged as unpaid by the tenant) as well as rental loss for May 2018, as she was unable to rent until June.

The landlord submitted one invoice as evidence for this hearing. The $63.00 invoice was for cleaning the rental unit at the end of the tenancy. The landlord submitted photographs from the end of tenancy showing: blinds with dirt and holes; chipped paint and wood, on kitchen cabinets; a stove-top with scratches; a dirty oven door with grease marks; the unit freezer un-defrosted; a dirty or stained bathtub; and a significant amount of personal items in the home. In the photographs supplied, the personal items cover all of the floors and most of the counters. The tenant argued that these photographs were not from the end of the tenancy and submitted her own photographs.

The tenant's photographs showed a clean, empty rental unit with clean walls, floors, refrigerator, stove, kitchen sink and dishwasher, as well as a clean bathroom and vacuumed floors. The unit was empty in the photographs. The landlord argued that the tenant did not take close-up photographs of the refrigerator and stove and therefore the lack of thorough cleaning could not be identified in the tenant's photographs. She also noted that the tenant did not have a photograph of the bedroom vent and referred to her photograph showing substantial dust and debris on the vent.

The landlord testified that the tenant's pet had urinated on the rug leaving a urine smell and stains on the rental unit's carpet. The landlord testified that the tenant did not clean the carpets at the end of the tenancy. The landlord testified that one blind in the rental unit, for a window of about 5 feet in size, was damaged and dirty: to the date of this hearing, she had not been able to clean the blind sufficiently and testified that she may need to replace it. She also testified that the dishwasher and stove need to be replaced however she had not replaced them as of the date of this hearing. The landlord did not submit invoices or quotes for work she described as needed at the rental unit, at the end of this tenancy (including carpet and blind cleaning).

The tenant disputed the condition at the end of the tenancy as described by the landlord, and she argued that the landlord was not entitled to a monetary order for damage to the rental unit, because there were no condition inspection reports. She testified that the carpets were not freshly cleaned at her move-in and that the blinds to the rental unit were not new or "like new" (as described by the landlord) at the start of the tenancy.

The tenant testified that she is an art student – not a hoarder. She testified that she was in art school during her tenancy and therefore had a multitude of personal items (papers, refuse, other items stored in the rental unit) in the residence. However, she testified that the unit was not dirty – just cluttered, "in disarray". The tenant testified that the reasons for the disarray, described by the landlord at the end of the tenancy,

included the fact that she was trying to pack around the time when she had emergency surgery. She testified that the landlord was aware that she was an art student, and should have understood the disarray of the unit during her tenancy. The tenant reiterated that, at the end of her tenancy, the unit was left in good condition. She argued that the landlord was overly particular and critical of her cleaning at move-out.

The tenant testified that she made her last rent payment on March 21, 2018, for the period of March 15 to April 15, 2018. She testified that she provided notice to the landlord on March 18, 2018, that she intended to vacate the rental unit and requested that the landlord retain the $575.00 security deposit to cover the period of April 15 to April 30, 2018. She testified that after this notice to the landlord on April 17, 2018, the landlord issued 10 Day notice to End Tenancy for Unpaid Rent (“10 Day Notice”). The tenant submitted that she acted in accordance with the landlord’s 10 Day Notice by vacating on April 27, 2018, (10 days after the issuance of the Notice to End Tenancy). The tenant wrote in her evidentiary materials and stated at this hearing, that she agrees that the landlord is entitled to retain $575.00 towards rent and utilities but that $525.00 of her combined pet damage and security deposit should be returned to her.

The landlord’s witness was a former landlord to this tenant She testified that, during the tenant’s prior tenancy, the tenant smoked in the rental unit and left urine and other stains on the carpet at the end of this previous tenancy. The landlord’s witness testified that she had a great deal of difficulty showing the unit to re-rent because of the condition of that rental unit at the end of the tenancy. The tenant disputed the entirety of the landlord’s witness testimony.

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 a 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 (in this case, the landlord) bears the burden of proof. The landlord must prove the existence of the damage/loss. In this case, the landlord relies on her testimony and her photographic evidence in support of her application for a monetary order against the tenant. Her testimony and her photographic evidence were countered by the tenant with her own testimony and photographs.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. In many cases where the condition of the unit at the end of tenancy is in question, the best evidence to

of the condition of the rental unit at the start and end of the tenancy is a condition inspection report. According to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the most reliable evidence of the condition of the unit unless proven otherwise.

> ***21*** *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

The landlord did not prepare a condition inspection report with the tenant at the start or the end of this tenancy. The completion of a condition inspection report, as well as the provision of two reasonable opportunities for the tenant to attend a condition inspection are requirements under sections 35 and 36 of the Act as well as Part 3 of the Residential Tenancy Regulation. The landlord testified that she is a first time landlord and she was not aware of her obligations with respect to condition inspections. This is not a sufficient reason for the landlord's failure to comply with the Act: she is obliged to know the requirements of a landlord. For the benefit of the parties, I have reproduced a large portion of section 38 of the Act and emphasized (with bold) section 38(5) and section 38(6) of the Act that states that if a landlord does not comply with the condition inspection requirements, the landlord forfeits her right to retain the tenant's security deposit.

> ***38*** *(1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> *(a)the date the tenancy ends, and*
> *(b) the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*
>
> *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*
>
> *…(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
>
> *(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

> *(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*
>
> *(5)* ***The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].***
>
> *(6)* ***If a landlord does not comply with subsection (1), the landlord***
>
> ***(a) may not make a claim against the security deposit or any pet damage deposit, and***
>
> ***(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*** *…*

The landlord must also provide verification of the monetary amount of her loss/damage sought from the tenant, if she is to be successful. With respect to the cleaning of the unit at the end of the tenancy, she provided an invoice to verify her costs however, the landlord did not provide any verification of the other amounts she sought in her application for repair of damage at the rental unit.

I find that the landlord has not proved, on a balance of probabilities, that the tenant left the unit in a condition that required additional cleaning. I rely on the photographs of the tenant that showed a cleaned rental unit and I note that the landlord's photographs appear to be close-ups of limited portions of the residence (for example, a mark within a drawer in the refrigerator). I accept the photographs of the tenant over the photographs of the landlord in general, in that they clearly show the entirety of the rental unit.

While the landlord provided evidence that she paid for additional cleaning services, I find that she did so to meet her own standards and not the cleanliness standards pursuant to the Act and Regulations. Therefore, the landlord did not provide sufficient evidence to show that the tenant should be responsible for the cost of those additional cleaning services. I refer the landlord to Residential Policy Guideline No. 29 that further clarifies the tenant's obligation under section 37 of the Act. Section 37(2) reads, "When a tenant vacates a rental unit, the tenant must …leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…".

Guideline No. 29 provides the standard upon which an arbitrator must evaluate the cleanliness of the unit: it is not the standard of the arbitrator themselves or the standard of a particular landlord but it is a standard of reasonableness, taking into consideration

factors including the condition of the unit at the outset of the tenancy, the age of the property and other characteristics of that rental unit. Given this standard and based on the evidence before me, I find that the landlord is not entitled to recover the cleaning invoice cost from the tenant. Based on all of the evidence before me, I find that the tenant left the rental unit in reasonably clean condition, meeting her tenant-obligations under the Act.

Policy Guideline No. 29 also discusses a landlord's right to a security deposit and/or pet damage deposit,

> *A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*
>
> *• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
>
> *• to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
>
> *• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
>
> *• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

In this case, I find that the landlord has provided insufficient evidence with respect to her monetary claim against the tenant for damage to the unit: she has failed to show that the tenant caused damage beyond normal wear and tear and she provided no evidence to quantify any loss as a result of damage to the unit. For these reasons, I find that the landlord is not entitled to the amount sought for damage to the rental unit.

With respect to the landlord's claim for unpaid rent and rental loss, I find that the evidence of both parties is that while the tenant remained in the rental unit until April 28, 2018, the tenant did not pay rent to the landlord for the period of April 15 to April 30, 2018. Based on this finding and in consideration of the tenant's concession that the landlord should be entitled to retain $575.00 of her combined security and pet damage deposit, I find that the landlord is entitled to $575.00 for a half months' rent from April 15 to 30, 2018 ($550.00) and unpaid utilities ($25.00).

The landlord sought to recover a full months' unpaid rent ($550.00 in addition to the amount provided above) and a half months' rent for rental loss ($550.00 for May 15, 2018 to June 1, 2018). The landlord argued that, since rent was due on the 15th of each month, she was entitled to the tenant's full months' rent to May 15, 2018. She also

submitted that, because she did not re-rent the unit during the month of May 2018, the tenant should be required to compensate her for May 15 to June 1, 2018, rent ($550.00).

The parties agreed that this tenancy was scheduled, from its outset to end on April 30, 2018. Therefore, I find that this oral tenancy with no written tenancy agreement was a fixed term tenancy. Section 45(2) requires a tenant ending a fixed term tenancy to do so not earlier than one month after the date the landlord receives the notice and not earlier than the date specified for the end of the tenancy and the day before the day in the month that rent was due. In this case, rent was due on April 15, 2018. The tenant provided her notice 3 days after April 15 and her notice to the landlord was to be effective on April 28, 2018. However, prior to the end of the fixed term the landlord issued a 10 Day Notice to End Tenancy to the tenant by posting it on her door on April 17, 2018. With the issuance of this Notice to End Tenancy by the landlord, the tenant was required to vacate the rental unit by April 30, 2018 (corrected effective date).

All of the evidence before me is that the tenant vacated the rental unit prior to April 30, 2018. I accept the evidence showing that the tenancy was scheduled to end April 30, 2018. The landlord issued a Notice to End Tenancy to be effective on this date. At this hearing, the parties agreed that the tenancy was set to end on April 30, 2018. Therefore, I find that the landlord is only entitled to compensation from the tenant for rent up to April 30, 2018. As stated above, the landlord is entitled to $550.00 for unpaid rent to April 30, 2018.

I dismiss the landlord’s application for an additional months’ rent for rental loss. I accept the tenant’s argument at this hearing that, because the parties had agreed that the tenant would vacate the unit on April 30, 2018, the landlord could have anticipated she would be required to re-rent the unit and could have taken steps to re-rent the unit. The landlord had further assurance, in the notice from the tenant that she would vacate prior to April 30 and could also rely on her 10 Day Notice (undisputed by the tenant) that the tenant should vacate on April 30, 2018.

I find that the landlord has provided insufficient evidence to support her claim for rental loss and damage to the rental unit. Therefore, I cannot accept her claim that she needed additional time for cleaning or repairs before re-renting the unit. I find that the tenant vacated in accordance with the oral residential tenancy agreement between the parties and the Notice to End Tenancy issued by the landlord. Therefore, I cannot accept the landlord’s claim that she is owed additional rent from the tenant. The landlord re-rented the unit on June 1, 2018. She testified that she did not advertise the rental unit in May 2018, because of her own concerns about finding an acceptable tenant. Given

the landlord's testimony, I find that the landlord did not take sufficient steps to mitigate any rental loss, I find that the landlord is not entitled to recover rent from May 15, 2018 to June 1, 2018.

I find that the landlord is entitled to retain a portion ($575.00) of the tenant's security and pet damage deposits (totaling $1100.00) towards the remainder of April 2018 rent and utilities. Section 38(1) requires the tenant to provide her forwarding address in writing in order to be eligible for an award in double the amount of her security and pet damage deposits. As the tenant provided her address via text and text messaging is not an accepted method to provide a forwarding address to the landlord, I find that the tenant is not entitled to an award that doubles the amount of her security and pet damage deposits. However, I am obliged to order the return of the remainder of the deposits.

As the landlord has been successful in part in her application, I find that the landlord is entitled to recover the $100.00 filing fee for this application.

Conclusion

I grant a monetary order to the tenant to recover the remainder of her security and pet damage deposits as follows,

Item	**Amount**
Security Deposit	$550.00
Pet Damage Deposit	550.00
Unpaid Rent $550.00 + utilities $25.00	-575.00
Filing fee	-100.00
Total Monetary Order to Tenant	**$425.00**

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: June 28, 2018

Residential Tenancy Branch