Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord had an assistant attend the hearing to provide support. The landlord stated that they had the company who disposed of items available to provide testimony if required and a witness regarding damage to the shack that had not been repaired yet.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and evidence.

The tenant testified that they left an evidentiary package with the landlord on September 24, 2018, and referred to a time stamped picture and written witness statement to confirm service. The landlord stated that they only received the evidence a couple of

days prior to the hearing but indicated that she was ready to proceed. I find that the landlord was duly served with the tenant's evidence in accordance with section 88 of the Act. As the landlord confirmed that they were ready to proceed, I will consider the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent, for damage to the rental unit and for damage or loss under the *Act*, Regulations or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on July 01, 2015, with a monthly rent of $1,000.00, due on the first day of each month. The landlord confirmed that they retain a security deposit in the amount of $500.00.

The landlord provided in evidence a copy of a Monetary Order Worksheet which details the landlord's monetary claim as follows:

Item	**Amount**
Paint Supplies	$439.95
Painting of Rental Unit	600.00
Re-keying of Rental Unit	222.60
Door Repair	589.90
Screen Repairs	204.75
Dump Run and Garbage Removal	787.50
Photocopies	121.13
Processing Costs for RTB	200.00
Cost of Registered Mail	29.06
Outstanding Rent January/February 2017	2,000.00
Requested Monetary Award	**$5,194.89**

The tenant provided the following items in evidence;

- A written statement from the tenant providing a timeline of events during the tenancy;
- Various pictures of the interior of a shack during the tenancy and at the time of the tenant moving out including one on February 27, 2017, when the tenant vacated the shack/shop and handed the landlord their forwarding address. There are also pictures of items that the tenant is in possession of which the tenant states the landlord has claimed they had disposed and were seeking compensation for; and
- Various text messages exchanged between the landlord and the tenant during the tenancy.

The landlord confirmed that they did not have a condition inspection report completed at the beginning of this tenancy in July 2015 or at the end of this tenancy in February 2017. The landlord referred to evidence that there was a condition inspection report completed at the end of the previous tenancy in June 2015. The landlord submitted that the rental unit was painted in June 2015 and that it required re-painting at the end of the tenant's occupancy of the rental unit.

The landlord stated that they needed to re-key all of the locks in the rental unit, repair a stained glass door, repair screens and incurred costs to clean up a shop that was being rented as a facility of the tenancy for an additional cost. The landlord indicated that she was also seeking compensation for the preparation for this hearing, registered mail and a filing fee from a previous hearing in which she was not successful.

The landlord submitted that the tenant owes rent for February 2017 and January 2017 due to the tenancy ending for unpaid rent when the landlord served a 10 Day Notice for Unpaid Rent. The landlord confirmed that they received the tenant's forwarding address on February 27, 2017, but that they were not able to gather all required materials to make the Application until March 19, 2018. The landlord

The tenant confirmed that they did not pay the rent for January 2017 and that they were trying to arrange payment with the landlord but that the landlord insisted on waiting for the hearing. The tenant stated that they left their key on the counter at the end of their occupancy of the rental unit and informed the landlord at that time. The tenant testified that the landlord did not complete a condition inspection with them at the end of their occupancy on February 01, 2017, or when the tenant removed the remainder of their belongings from the shack on February 27, 2017.

The tenant disputed all of the claims, other than for unpaid rent, which the landlord is claiming for. The tenant stated that the broken door was due to the landlord's actions when coming into the rental unit and kicking the door in. The tenant submitted that they were not responsible for the screens needing repair and that many of the items that the landlord is stating were disposed of from the shack were actually in the tenant's possession. The tenant referred to pictures in evidence showing that they are currently in possession of items that the landlord has claimed were disposed of and is seeking compensation for.

The landlord responded by submitting that she did enter the rental unit due to fearing that the tenant was in danger but that she had used a key when entering the rental unit.

Analysis

During the course of the hearing I found that it was not necessary to take testimony from the company who disposed of items from the shack as the fact that they did this was not in question but there was no indication that this company would have knowledge of whose items they were disposing.

I further found that the landlord had not claimed for damage to the shack and had not undertaken any repairs as of the time of the hearing and, as no loss had yet occurred, it was not necessary to hear testimony regarding this damage.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 24 (2) of the *Act* establishes that the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, at the beginning of the tenancy, the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36 (2) of the *Act* establishes that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, 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.

In regards to costs associated to the painting of the rental unit, the re-keying of the locks, the screen repair and the cleaning of the shack, I find that the landlord did not have complete a condition inspection report at the beginning or the end of the tenancy which would confirm the items that the landlord is claiming for and establish any damage or loss suffered.

For the above reason I find that the landlord is not able to establish the condition of the unit prior to and after the tenancy which would establish that they suffered any loss or damage to the rental unit which would require it to be re-painted or for repairs to the screens to be completed.

I find that the text message conversations indicate that the landlord had items in the shack as well as the tenant's items. As there is no Condition Inspection Report completed at the beginning or at the end of the tenancy, I find that the landlord is not able to establish what items in the shack were there initially and belonged to the landlord and which items belonged to the tenant that were disposed of and that the landlord is claiming compensation for.

Regarding the damage to the door, I find that there is no definitive evidence which demonstrates that it was the tenant's actions or neglect which caused the damage. I find that the landlord and the tenant have differing explanations as to the manner in which the landlord entered the rental unit. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I find that the credibility of the landlord's testimony is impacted by claiming for disposal of items that they have not sufficiently proven that it was the actions of the tenant which caused the damage to the door.

I find that the landlord's monetary claims for preparation for this hearing, including costs for registered mailing and photocopies, are the landlord's responsibility for the cost of doing business and must be absorbed by the landlord. I further find that I am not able to

award a filing fee for a previous decision as the landlord was not successful and a filing fee is only awarded when party is successful in their application. I find that the matter was already decided by the arbitrator who considered the previous application.

For the above reasons, I find that the landlord has not provided sufficient evidence to prove that they have incurred any loss in damage to the rental unit or any other type of loss under the *Act*.

Therefore, I dismiss the landlords' Application for a monetary award for damage to the rental unit and for other money owed for compensation or loss under the Act, without leave to reapply.

Regarding the landlord's claim for unpaid rent, I find that it is undisputed that the tenant owes rent for January 2017 in the amount of $1,000.00. Residential Tenancy Policy Guideline # 3 establishes that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. For this reason I find that the tenant also owes rent for February 2017. Therefore I find that the landlord is entitled to a monetary award in the amount of $2,000.00 for unpaid rent owing for January 2017 and February 2017

Section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit. I find that the landlord received the tenant's forwarding address on February 27, 2017, and, as the tenant did not agree in writing for the landlord to retain any amount from their security deposit, I find the landlord had until March 15, 2017, to file an application for dispute resolution in accordance with section 38 of the *Act*.

Since I have found the landlord confirmed receiving the tenant's forwarding address on February 27, 2017, I find that the landlord was obligated to obtain the tenant's written consent to keep the security deposit or to file an Application on or before March 15, 2017, 15 days after receiving the end of the tenancy. I find that the landlord filed their Application on March 19, 2018.

I find that there is no evidence provided to show that the landlord had the tenant's agreement in writing to keep the security deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenants' forwarding address to retain a portion of the security deposit as required under section 38 (1).

For the above reason, the landlord's Application to retain all or a portion of the security deposit is dismissed, without leave to reapply.

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

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. Pursuant to sections 38 (6) and 67 of the Act, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award of $1,000.00, which is comprised of double the security deposit ($500.00 X 2) plus applicable interest. There is no interest payable over this period.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's monetary award in partial satisfaction of the unpaid rent owing for January 2017 and February 2017 in the amount of $2,000.00. Therefore I find that the landlord is entitled to a monetary award in the amount of $1,000.00 for unpaid rent.
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As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover lost rent for January 2017 and February 2017, to retain the tenant's doubled security deposit and to recover the filing fee for this Application:

Item	Amount
January 2017 Unpaid Rent	$1,000.00
February 2017 Unpaid Rent	1,000.00
Less Security Deposit which was doubled ($500.00 X 2)	-1,000.00
Filing Fee for this Application	100.00
Total Monetary Order	$1,100.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 22, 2018

Residential Tenancy Branch