Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for unpaid rent, damage to the rental unit, other money owed, and recovery of the filing fee as well as retention of the Tenants' security deposit.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the "Agent"), and the three tenants (the "Tenants"), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Residential tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1 – Service

The Tenant R.H. acknowledged that she was served copies of the Application, the Notice of Hearing, and the Landlord's evidence well in advance of the hearing. However, the Tenants S.C. and C.C. disputed being properly served and requested that the hearing be dismissed on this basis.

In the documentary evidence before me the Landlord submitted a witness statement stating that on January 14, 2018, the witness observed the Agent personally serve S.C. with a copy of the Application, the Notice of Hearing, and the evidence before me from

the Landlord at her place of work. When asked, the Tenant S.C. confirmed that she was personally served with these documents, as well as an identical package for her mother, C.C., at her place of work on January 14, 2018. However, she argued that this does not constitute proper service as this is what she was told by a third party. Further to this, she stated that the Landlord made a scene at her work while serving the documents, which was inappropriate and embarrassing.

While sections 88 and 89 of the *Act* outline several methods of serving documents in accordance with the *Act*, both sections state that leaving a document with that person is an acceptable form of service. As a result, I find that S.C. was personally served with a copy of the Application, the Notice of Hearing, and the evidence before me from the Landlord on January 14, 2018, in accordance with the *Act*.

The witness statement also states that on January 14, 2018, the witness observed the Agent personally serve S.C. with a package for the Tenant C.C., which included a copy of the Application, Notice of Hearing, and the evidence before me from the Landlord. In the hearing C.C. acknowledged that she received these documents from her daughter, S.C., but argued that they were not received by her from S.C. for several days. As a result of this delay, and the fact that the documents were given to S.C. and not to her directly, she stated that she was not properly served.

While I acknowledge that serving documents on her daughter, who is also a respondent in this matter, is not an acceptable form of service explicitly named under sections 88 or 89 of the *Act*, section 71(2)(c) of the *Act* states that the director may order that a document not served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for the purposes of this *Act*. As C.C. acknowledged receipt of the Application, Notice of Hearing, and the documentary evidence before me from the Landlord several days after it was personally served on her Daughter on January 14, 2018, I therefore find that these documents were sufficiently served on her for the purposes of the *Act*.

Based on the above I therefore dismiss the Tenants' request that the hearing be dismissed on the basis of improper service without leave to reapply. As a result, the hearing proceeded as scheduled.

Preliminary Matter #2 – Monetary Claim Amount

Although the Application states that the Landlord is seeking $5,300.00 in monetary compensation, the Monetary Order Worksheet in the documentary evidence before me lists a total of $6,425.00 in costs, including $2,250.00 in outstanding rent from

December, 2017. The Landlord submitted as part of the documentary evidence before me, a copy of a Monetary Order dated December 21, 2017, in the amount of $2,250.00 and I note that a decision was rendered by an arbitrator on that date awarding this amount to the Landlord for unpaid December 2017 rent.

Based on the above, I find that the matter of December 2017 rent has already been decided by an arbitrator and I therefore have no jurisdiction to hear or decide any matters in relation to rent for December of 2017. As a result, the hearing proceeded based on the Landlord's remaining monetary claims totalling $4,175.00.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to compensation for other money owed and recovery of the filing fee?

Is the Landlord entitled to withhold all or part of the Tenants' security deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy which commenced on November 1, 2017, was set to end on October 31, 2018, and that rent in the amount of $2,250.00 is due on the first day of each month. Although the tenancy agreement states that a security deposit and a pet damage deposit were both to be paid, each in the amount of $1,125.00, the Agent testified that only the security deposit was ever paid. The Tenant R.H. confirmed that she paid the security deposit at the start of the tenancy and the Tenant and S.C. stated that she paid half of the pet deposit. The Agent refuted the testimony provided by S.C. regarding the pet damage deposit and S.C. did not submit any documentary evidence in support of her testimony.

The parties, including the Tenants themselves, were in disagreement about the state of the rental unit at the start of the tenancy. The Agent testified that although the rental unit was clean, it was initially furnished and it took some time to remove furnishings from the rental unit that the Tenants' did not want. One of the Tenants, R.H., who was present for the condition inspection at the start of the tenancy agreed that there was furniture in the

rental unit for them to use or have removed by the Landlord and stated that although there was some garbage on the porch and in the back yard, the rental unit itself was reasonably clean and undamaged except a few stains and scratches. The Tenants S.C. and C.C., who were not present for the condition inspection at the start of the tenancy, disagreed stating that the rental unit was dirty and damaged to begin with.

In support of their testimony the Agent provided a copy of the condition inspection report signed by her and the Tenant R.H. at the start of the tenancy, showing that with the exception of several carpet stains and scratches to walls, the rental unit was clean and in good condition at the start of the tenancy. Neither C.C. nor S.C. submitted any documentary evidence in support of their testimony that the condition of the rental unit was not as stated above at the start of the tenancy.

Although the parties were all in agreement that the Tenant R.H. moved out of the rental unit sometime in early December of 2017 after giving notice to end the tenancy, the Agent and the Tenants C.S. and S.C. disagreed about when the tenancy actually ended. While the Agent testified that the tenancy ended on approximately January 3, 2018, S.C. stated that she vacated the rental unit on December 30, 2017, and C.S. stated that she vacated the rental unit on January 1, 2018.

The Agent stated that the rental unit was not left reasonably clean and undamaged at the end of the tenancy and sought $350.00 in cleaning costs, $900.00 in garbage removal costs and $600.00 for general repairs to the rental unit. For the general repairs, the Agent stated that several walls were required to be patched, a toilet was required to be unclogged, and the locks for the rental unit were changed. Although no breakdown of the $600.00 repair costs was provided on the invoice, the Agent stated that approximately $50.00 was for the cost of replacing the exterior locks and installing a lock on an interior door with access to the basement. In support of these costs the Agent submitted numerous photographs showing the state of the rental unit at the end of the tenancy, an invoice for garbage removal and repairs and a receipt for cleaning costs.

The Tenant R.H. stated that she feels she did her part by cleaning her own bedroom prior to moving out and that the bathroom was in full working order when she left. The Tenants C.C. and S.C. stated that they do not feel the Landlord is entitled to any cleaning or repair costs as the rental unit was damaged and unclean when they moved in. Further to this, they argued that the Landlord should not be entitled to any costs for lock replacement as there wasn’t a lock on the door to the basement to begin with and

landlords are required by the *Act* to change locks at the start of a new tenancy if requested by the new tenant.

Further to this the Landlord also sought $2,250.00 in unpaid rent for January of 2018. The Agent testified that due to the state of the rental unit at the end of the tenancy, it was not ready for re-rental until approximately January 10, 2018 – January 15, 2018, and was subsequently re-rented effective February 1, 2018, at a monthly rental rate of $1,900.00. Although the Agent stated that this is less than the Tenants owed per month under their fixed-term tenancy agreement, which is not set to end until October 31, 2018, the Landlord is not seeking the $350.00 per month in lost rent from February 1, 2018 – October 31, 2018, and is only seeking the $2,250.00 in lost rent for January, 2018.

All three Tenants agreed that no rent was paid for January of 2018. The Tenants S.C. and C.C. stated that they were under the impression that if they vacated the rental unit by January 1, 2018, which they did, the Landlord would not seek any money for December or January rent and would simply keep their deposit. The Agent denied that any such agreement was ever reached and no evidence was submitted by either C.C. or S.C. in support of their testimony.

Analysis

Section 25 of the *Act* states the following about rekeying locks:

Rekeying locks for new tenants

> **25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
>
> > (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
> >
> > (b) pay all costs associated with the changes under paragraph (a).
>
> (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

No evidence was before me that the Tenants damaged the locks to the rental unit and all parties were in agreement that no lock existed on the door to the basement during the tenancy. I therefore dismiss the Landlord's claim for reimbursement from the Tenants to replace exterior door locks as the replacement of locks at the start of a new

tenancy is the responsibility of a landlord under section 25 of the *Act*. Further to this, I find it unreasonable for the Landlord to seek compensation from the Tenants to install an additional lock that never existed during the course of the tenancy. As a result, I dismiss the Landlord's claim for $50.00 in lock replacement and installations costs without leave to reapply.

Although the Tenant R.H. stated that the bathroom was in good working order when she vacated the rental unit, I note that she vacated the rental unit several weeks before the end of the tenancy. I therefore accept the Agent's testimony and corroborative documentary evidence that the toilet was clogged at the end of the tenancy. Although the invoice provided by the Agent does not provide a breakdown of the cost for unclogging the toilet, I find $100.00 is a reasonable cost for this repair and I therefore grant the Landlord $100.00 for this service.

The Landlord also sought compensation for the patching of walls; however, no move-out condition inspection report was before me for consideration showing this damage and no other documentary or corroborative evidence was submitted demonstrating which walls required patching, or the extent of the damage caused by the tenants, if any, during the tenancy. In light of the conflicting testimony of the parties regarding damage to the rental unit and the lack of documentary evidence from the Landlord establishing that the Tenants damaged the property, I therefore dismiss the Landlord's claim for the costs of wall patching and repair without leave to reapply.

Despite the foregoing, the pictures submitted by the Agent clearly show that the rental unit was dirty and filled with refuse at the end of the tenancy. While the Tenants argued that the rental unit was left in the same state they received it in, section 37(2) of the *Act* clearly states that a tenant must leave the rental unit reasonably clean at the end of the tenancy. As a result, I find that the Tenants were required by the *Act* to leave the rental unit reasonably clean at the end of the tenancy, regardless of its condition at the start of the tenancy. In any event, I accept the affirmed testimony of the Agent and the Tenant R.H., in conjunction with the move-in condition inspection report, that the rental unit was reasonably clean and undamaged at the start of the tenancy. As a result, I grant the Landlord's claim for $350.00 in cleaning costs.

Although the Landlord sought $900.00 in garbage removal costs, the invoice states that this cost included the removal and disposal of furniture and mattresses. During the hearing the parties agreed that the rental unit had come furnished and there is no documentary or other evidence before me regarding whether the furniture and mattresses disposed of as part of this invoice belonged to the Landlord or the Tenants.

There is also no evidence that this furniture, if it did belong to the Landlord, was damaged by the Tenants thereby requiring disposal. As a result, I find that the Landlord is only entitled to the cost for garbage disposal and not for the cost of furniture removal or disposal. As the invoice does not provide a breakdown of these costs, I find $300.00 to be a reasonable amount for this service and therefore award the Landlord $300.00 for the cost of garbage removal.

Although the parties could not agree on whether the tenancy ended on January 1, 2018, or January 3, 2018, all parties agreed that no rent was paid for January of 2018. I have already found above that the rental unit was significantly dirty and filled with refuse at the end of the tenancy, and as a result, I accept the Agent's testimony that the rental unit was not ready for showings and re-rental unit approximately January 10, 2018 – January 15, 2018. Although the Tenants argued they should not be responsible for January rent, I do not agree. The Tenants signed a fixed-term tenancy agreement which was not set to end until October 31, 2018, whereby they agreed to pay $2,250.00 per month in rent. When the Tenant R.H. ended the fixed-term tenancy early by giving notice, the Tenants breached the fixed term of the tenancy agreement.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation, or tenancy agreement, the non-complying party must compensate the other for any loss suffered as a result of the non-compliance. Policy Guideline #3 states that where a tenant has fundamentally breached the tenancy agreement, such as ending the fixed-term prematurely, the landlord may be entitled to claim compensation for any lost rent over the balance of the initial fixed-term. Although the Landlord may have been entitled to claim loss of rent from February 1, 2018 – October 31, 2018, the Agent stated that the Landlord is only seeking the $2,250.00 in lost rent for January, 2018, as the rental unit could not be rented immediately due to the state in which it was left, and was not in fact rented until the first day of the following month. I find that the Landlord mitigated their loss by having the rental unit cleaned and re-rented within a reasonable time period and I therefore find the Landlord is entitled to $2,250.00 in rent for January of 2018.

As the Landlord was largely successful in their claim, I also find that they are entitled to $100.00 for the recovery of the filing fee pursuant to section 72 of the *Act*.

Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #17 states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit or a tenant's application for the return of the

deposit. Policy Guideline #17 also states that unless a tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit, less any amount owed to the Landlord under the *Act*, if:

- the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act;*
- the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process; or
- the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the *Act*.

Based on the above, and given that the Landlord has applied to retain the security deposit paid by the Tenants; I find that I must now turn my mind to whether the Tenants are entitled to the return of all, a portion, or double the amount paid for their security deposit, less any amounts owed to the Landlord under the *Act*.

All parties agreed that a security deposit in the amount of $1,125.00 was paid, and although the Tenant S.C. stated that she paid half of the $1,125.00 pet damage deposit owed, the Agent refuted this testimony and the Tenant did not submit any evidence to corroborate her testimony. As a result, I find that the Tenant S.C. failed to satisfy me, on a balance of probabilities that she paid any money towards the pet damage deposit. I therefore find that the only deposit paid by the Tenants was the $1,125.00 security deposit.

Section 38(1) of the *Act* states that within15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing, the landlord must either return the deposit to the tenant or file a claim against it with the Residential Tenancy Branch (the "Branch"). Although the parties could not agree whether the tenancy ended on January 1, 2018, or January 3, 2018, as the Landlord's Application seeking to retain the security deposit was filed with the Branch on January 9, 2018, I find that the Landlord complied with section 38(1) of the *Act* regardless of which of the aforementioned dates the tenancy ended on. In any event, the Tenants did not provide any evidence establishing when or if their forwarding addresses were provided to the Landlord in writing.

Given the above and as neither party made any arguments regarding extinguishment of either the Tenants' right to the return of the security deposit or the Landlord's right to claim against it, I find that neither party extinguished their rights in relation to the

security deposit and that the Tenants are not entitled to double the amount of their security deposit.

Based on the above, and pursuant to section 72 of the *Act*, I find that the Landlord is entitled to retain the $1,125.00 security deposit paid by the Tenants, in full, towards the $3,100.00 owed by the Tenants for rent, cleaning, garbage removal, toilet maintenance, and recovery of the filing fee. As a result, the Landlord is therefore entitled to a Monetary Order for the remaining balance owed by the Tenants in the amount of $1,975.00; $3,100.00, less the $1,125.00 security deposit retained.

I believe this decision to have been rendered within 30 days after the conclusion of the proceedings in accordance with section 77(1)(d) of the *Act*. In the event that this is incorrect, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if it is given after the 30 day period in subsection (1)(d).

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $1,975.00. The Landlord is provided with this 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 12, 2018

Residential Tenancy Branch