Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 monetary compensation for damage to the rental unit and loss of rent, recovery of the filing fee, and authorization to withhold the security deposit.

The hearing was convened by telephone conference call and was attended by legal counsel for the Landlord, the agent for the Landlord (the "Agent"), and the Tenant, 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. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with 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

At the outset of the hearing legal counsel for the Landlord stated that the amount of the monetary claim in the Application, $2,250.00, was calculated incorrectly and that the correct amount owed is actually $5,275.00; $400.00 for cleaning and painting, and $4,875.00 for lost and unpaid rent. I asked the Agent and legal counsel for the Landlord if an Amendment to an Application for Dispute Resolution (an "Amendment") had been

filed with the Residential Tenancy Branch (the "Branch") increasing the monetary claim amount and they stated it had not.

While rule 4.2 of the Rules of Procedure states that an Application may be amended in the hearing in circumstances that can reasonably be anticipated, I do not find rule 3.4 applicable in this case for the following reasons. First, an increase to the monetary claim for something such as loss of rent due to a breach of a fixed term tenancy is not something I would consider a respondent to reasonably be able to anticipate, as opposed to an increase in the amount of outstanding rent owed when a Tenant has not paid rent for several months during an ongoing tenancy. Further to this, the Application clearly states that the Landlord is seeking $1,950.00 in lost rent for February as the rental unit was re-rented as of March 1, 2018. The Agent and legal counsel for the Landlord now assert that this is incorrect and that the rental unit was not in fact re-rented until April 15, 2018; however, apart from filing an Amendment, I find no reasonable way in which the Tenant could have known of this change in the Landlord's claim prior to the date of the hearing. Further to this, the Landlord has had ample time to amend their claim seeking an increase in the amount of monetary compensation owed for loss of rent prior to the date of the hearing.

Rule 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. As an Amendment was not filed with the Branch and I have already stated above that I do not find it appropriate to amend the Application in the hearing, the hearing therefore proceeded based on the Landlord's claim as stated in the Application for recovery of the filing fee, authorization to withhold the security deposit against any money owed, and compensation in the amount of $2,250.00; $400.00 for cleaning and damage to the rental unit, and $1950.00 for lost rent for February, 2018, due to a breach of the fixed-term tenancy agreement.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for damage to the rental unit and loss of rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit paid by the Tenant against any money owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy began on July 28, 2018, and that rent in the amount of $1,950.00 was due on the first day of each month. The tenancy agreement also states that a $975.00 security deposit was paid, which the parties confirmed the Landlord still holds. The parties also agreed that the Landlord still holds $600.00 of rent essentially pre-paid by the Tenant at some point during the tenancy. Although the Agent testified that these are the correct terms of the tenancy agreement, the Tenant testified that this is incorrect. The Tenant agreed that a security deposit in the amount of $975.00 was paid but argued that rent was supposed to be $1,850.00, not $1,950.00 The Tenant stated that the tenancy agreement was signed when no amount of rent was listed and that a verbal agreement was in place that rent would be $1,850.00 per month. The Tenant stated that when he returned from obtaining cash from the deposit, the Agent advised him there had been a mistake and that rent for his particular rental unit was actually $1,950.00. The Tenant stated that the tenancy agreement was amended after he signed it to show rent as $1,950.00 without his consent and despite the previous verbal agreement on the rent amount. Despite the foregoing, the Tenant stated that he felt there was no other option but to pay this amount. The Agent disputed that the tenancy agreement was altered after it was signed or that any agreement, verbal or otherwise, was even in place for a rental amount of less than $1,950.00.

Although the Tenant provided justifications for why he ended the fixed term tenancy early, such as harassment from the Landlord regarding noise complaints and the health of his spouse, the parties were in agreement that the tenancy ultimately ended as the Tenant gave written notice on December 31, 2018, stating that they were ending the tenancy effective February 1, 2018. While the Tenant argued that the tenancy ended February 1, 2018, as the Landlord revoked his FOB access, the Agent denied that any such thing occurred and stated that the tenancy in fact ended on February 2, 2018,

when the move-out condition inspection was completed and the Tenant returned the keys to the rental unit. In support of this testimony the Agent pointed to the move-out condition inspection report in the documentary evidence before me.

Both parties agreed that a condition inspection was completed with the Agent and the Tenant at both the start and end of the tenancy; however, the parties were in disagreement about whether the Tenant was provided copies of the condition inspection reports. The Agent testified that copies were provided to the Tenant at the time of the inspections as the form, which transfers writing from the top page onto the subsequent pages, contains three copies; one for the Landlord, one for the Tenant's copy of the move-in inspection, and one for the Tenant's copy of the move-out inspection. The Tenant denied being provided with copies of these reports.

The Landlord sought $400.00 for the cost of cleaning and painting the rental unit and submitted an invoice for these costs. In the hearing the Agent testified that the rental unit was not clean at the end of the tenancy and pointed to the move-out condition inspection report in the documentary evidence before me which she states shows that the rental unit was not clean and that the Tenant agreed that the condition of the rental unit was as shown in the report. The Agent also stated that the Tenant agreed to pay $200.00 for the cost of painting the rental unit due to smoke and other wall damage. In support of this testimony the Agent pointed to text messages in the documentary evidence whereby the tenant agreed to pay this cost.

Although the Tenant stated that he disagreed that $200.00 was required to paint the rental unit as it had not in fact been damaged, he acknowledged that he did agree to pay the $200.00 sought by the Landlord for painting as he simply wanted the matter resolved. The Tenant did however dispute that the rental unit was not clean stating that he hired his own cleaner who performed 5-6 hours of cleaning the day before the move-out inspection. The Tenant did not submit any documentary evidence in support of his testimony that he hired a cleaner himself.

The Agent and legal counsel for the Landlord stated that the Tenant also owes $4,875.00 for lost rent between February 1, 2018 – April 14, 2018, as he breached the fixed-term tenancy by ending the tenancy early and that the rental unit could not be re-rented until April 15, 2018. The Agent stated that the rental unit was first advertised for re-rent online and via a sign in front of the building on approximately January 22, 2018, and that showings began on January 23, 2018. Despite the foregoing, the Agent stated that the rental unit was not renting and as a result, the advertised price was dropped from $1,950.00 to $1,800.00 sometime in February in order to increase interest. The

Agent stated that a tenancy agreement with a new occupant was ultimately signed on April 4, 2018, for a tenancy commencing April 15, 2018, at the monthly rental rate of $1,800.00. In support of this testimony the Agent pointed to a copy of an online advertisement, text messages regarding showings, a photograph of a building sign stating there are rental units available and a copy of the new tenancy agreement.

The Tenant stated he should not be responsible for any rent for February, March, or April, as he was forced to end the tenancy due to harassment from the Landlords and the effect it was having on the health of his pregnant wife. Although the Tenant stated that he has a Dr.'s note stating that the living environment was negatively affecting his wife's health, he did not submit a copy for my consideration. Further to this the Tenant stated that he was prevented from accessing or showing the suite at the start of February which prevented him from securing a new tenant himself. Although the Tenant stated that he initially paid February rent, he stated that this rent cheque was cancelled when the Landlords revoked his access to the rental unit and requested he turn in the keys at the move-out inspection.

The Agent acknowledged that the keys were turned in as the tenancy had ended as a result of the Tenant's notice to end the tenancy and that as a result, the Tenant no longer had access to the rental unit after February 2, 2018.

The parties also disputed when the Tenant's forwarding address was provided in writing. The Agent testified that it was not provided until February 21, 2018, when it was received by e-mail. The Tenant stated that he gave it to the Agent verbally on December 31, 2018, and signed a document containing the forwarding address on that date, a copy of which was never provided to him. The Tenant stated that when the Agent denied having his forwarding address, he provided it again via e-mail on February 21, 2018.

Analysis

Although the Tenant alleged there was initially a verbal agreement that rent would be $1,850.00, the Agent denied this allegation and the Tenant did not submit or point to any documentary evidence or call any witnesses in support of this testimony. I have before me in the documentary evidence, a signed tenancy agreement stating that rent is $1,950.00 and the Tenant confirmed that he paid a security deposit in the amount of $975.00, which is half of $1,950.00. While the Tenant argued that the amount of rent was blank at the time he signed the tenancy agreement, it makes no sense to me that he would pay $975.00 for a security deposit, which is half of $1,950.00, if rent had in

fact been agreed upon as $1,850.00 or that he would willingly pay $1,950.00 in rent on an ongoing basis without complaint. As a result I therefore find that the Tenant was obligated to pay $1,950.00 in rent on the first date of each month for the period of the fixed-term as shown in the tenancy agreement in the documentary evidence before me.

Although the parties disagreed about the date upon which the tenancy ended, ultimately they both agreed that a move-out condition inspection was completed on February 2, 2018, at which point the Tenant turned in the keys to the rental unit. As a result, I find that the tenancy ended on February 2, 2018. Although the Tenant argued that he had no choice but to end the tenancy, ultimately both parties were in agreement that the reason the fixed-term tenancy ended was because the Tenant gave written notice on December 31, 2018, to end the fixed-term tenancy effective February 1, 2018. Section 45 of the *Act* states that a tenant may end a fixed–term tenancy agreement by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than that date specified as the end of the fixed-term in the tenancy agreement, and is the day before the day in the month or other period on which the tenancy is based, that rent is payable under the tenancy agreement. The tenancy agreement in the documentary evidence before me states that the end of the fixed-term is July 31, 2018, and that rent is due on the first day of each month. As a result, and pursuant to section 45 of the *Act*, I therefore find that the earliest the Tenant could have ended the tenancy agreement in compliance with the *Act* is July 31, 2018, by serving a one month notice to end tenancy on the Landlord no later than June 30, 2018.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Pursuant to section 45 of the *Act*, I find that the Tenant breached the terms of the tenancy agreement when he gave notice to end the tenancy prior to the end of the fixed term. In the Application the Landlord sought $1,950.00 in lost rent for February, 2018. Although the Agent testified in the hearing that the rental unit was not in fact re-rented until April 14, 2018, and that the Landlord suffered a loss of rent in the amount of $4,875.00 between February 1, 2018, and April 14, 2018, as stated in the Preliminary Matters section of this decision, the Landlord failed to file and Amendment to their Application seeking loss of rent for March or April and I declined to amend the Application in the hearing.

Although the Tenant stated that he was prevented from finding a new Tenant to occupy the rental unit when they revoked his access to the rental unit and therefore should not be responsible for any loss in rent, I do not agree. The Tenant agreed that no rent was

paid for February and I find that he had no lawful right to access the rental unit after the end of the tenancy of February 2, 2018. Further to this, I note that the only reason the tenancy ended was because the Tenant served notice on the Landlord stating he was ending the tenancy. I accept the testimony of the Agent that they made all reasonable efforts to re-rent the unit as soon as possible such as advertising and showing the rental unit prior to the end of the tenancy and reducing the advertised rental rate when the unit did not rent.

Policy Guideline #3 states that damages awarded for loss of rent are intended to put the landlord in the same position as if the tenant had not breached the agreement and that as a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. As I have already found above that the tenant breached the *Act* by ending the fixed-term tenancy early, and that the Landlord has acted reasonably in mitigating the loss suffered by taking reasonable steps to have the rental unit re-rented quickly and at a reasonably economic rate, I therefore grant the Landlord's claim for February rent in the amount of $1,950.00. The Landlord remains at liberty to seek compensation in a subsequent application for any further loss of rent, should they wish to do so.

The Landlord also sought $400.00 for the cost of cleaning and repairs; $200.00 for painting and $200.00 in cleaning costs. Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear. As both parties agreed in the hearing that an agreement was reached between them at the end of the tenancy for the Landlord to charge $200.00 for the cost of painting the rental unit, I find that the Landlord is entitled to this cost. Although the Tenant stated that he hired his own cleaner and therefore the Landlord should not be entitled to cleaning costs, he did not submit any documentary or other evidence in support of this testimony. In contrast the Landlord submitted a copy of a cleaning invoice and the move-out condition inspection report signed by the Tenant and an agent for the Landlord stating that several areas of the rental unit were not clean at the end of the tenancy and that the condition inspection report fairly represents the condition of the rental unit at the end of the tenancy. Based on the above, and pursuant to sections 7 and 37 of the *Act*, I find that the Landlord is entitled to the $200.00 sought for the cost of cleaning the rental unit.

The parties agreed that the Landlord withheld the Tenant's $975.00 security deposit but disputed whether the Application seeking retention of the security deposit was filed in compliance with section 38 of the *Act*. Although the Tenant stated that he gave his forwarding address to the Landlord on December 31, 2018, the Agent denied that this

occurred and the Tenant did not provide any documentary or other evidence in support of his testimony. As a result, I am not satisfied that the Tenant provided his forwarding address to the Landlord, in writing, on December 31, 2017. However, both parties agreed that the forwarding address was sent to and received by the Landlord via e-mail on February 21, 2018. As a result, I accept that the Tenant's forwarding address was provided to the Landlord, in writing, on February 21, 2018. As the Landlord's Application was filed on February 24, 2018, I therefore find that it was filed within 15 days of the date the forwarding address was provided in wiring, which was later than the date of the end of the tenancy, and therefore filed in compliance with section 38(1) of the *Act*.

The Tenant argued that the Landlord extinguished their right to retain or claim against the security deposit as they did not provide them copies of either of the condition inspection reports as required by the *Act* or regulation. The Agent testified that the form used is similar to a carbon-copy and contains three identical copies of the report; one for the Tenant after the move-in inspection, one for the Tenant after the move-out inspection, and one copy for the Landlord with information from both inspections. As a result, the Agent testified that the Tenant was provided a copy of each report at the time the inspection was completed. I note that the copy of the condition inspection report in the documentary evidence before me clearly states that it contains the three copies as stated by the Agent. As a result, I find that the Agent has satisfied me, on a balance of probabilities, that the Tenant was in fact provided with the required copies at the time of the inspections. Based on the above, I therefore dismiss the Tenant's argument that the Landlord extinguished their right to claim against the security deposit.

Having made the above findings, and pursuant to Policy Guideline 17, I find that the Landlord is therefore entitled to retain, in full, the $975.00 security deposit paid by the Tenant in partial satisfaction of the $2,350.00 owed for February rent, cleaning and repairs. I also find that the Landlord is entitled to recovery of the $100.00 filing fee pursuant to section 72 of the *Act*.

Based on the above and pursuant to section 67 of the *Act*, I therefore find that the Landlord is entitled to a Monetary Order in the amount of $875.00; $1,950.00 for February rent, $400.00 for cleaning and repairs, and $100.00 for recovery of the filing fee, less the $975.00 security deposit retained and the $600.00 in other money held by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $875.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 28, 2018

Residential Tenancy Branch