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:

- Retention of the Tenant's security deposit;
- Compensation for damage to the unit or property;
- Compensation for other money owed;
- Recovery of unpaid rent or utilities; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by three agents for the Landlord (the "Agents"), all of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agents testified that the Application and the Notice of Hearing were sent to the Tenant by registered mail on May 31, 2018, and provided me with the registered mail tracking number. The Agents testified that the registered mail was delivered and signed for by the Tenant on June 4, 2018, and with their consent, I logged into the mail service provider's website which confirms that the registered mail was sent and received as described above. As a result, I find that the Tenant was served with the Application and the Notice of Hearing in accordance with the *Act* and the Rules of Procedure on June 4, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Agents testified that the amount of the Landlord's claim has been dropped from $3,155.00 to $1,973.00. The Application was amended accordingly.

Preliminary Matter #2

The Agents testified that the documentary evidence before me for consideration from the Landlord was sent to the Tenant by registered mail on June 14, 2018, and October 12, 2018, and provided me with the registered mail tracking numbers. The Agents testified that the registered mail sent on June 14, 2018, was delivered and signed for by the Tenant on June 20, 2018, and that the registered mail sent on October 12, 2018, was intentionally refused by the Tenant. With their consent, I logged into the mail service provider's website which confirms that the registered mail sent on June 14, 2018, was received as described above and that the registered mail sent on October 12, 2018, was refused by the recipient on October 17, 2018.

Based on the above, I find that the Tenant was served with the registered mail sent on June 14, 2018, on June 20, 2018, the date is was actually received. Section 90 of the *Act* states that a document given or served by mail in accordance with section 88, unless earlier received, is deemed to be received on the 5th day after it is mailed. Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. It also states that where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. As a result, I find that the registered mail sent on October 12, 2018, was deemed received on October 17, 2018, the date it was refused by the Tenant which is also five days after it was sent by

registered mail. As a result, I have accepted all of the documentary evidence before me from the Landlord for consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to retain the Tenant's security deposit?

Is the Landlord entitled to compensation for unpaid rent or utilities?

Is the Landlord entitled to compensation for damage to the rental unit or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy, which commenced on January 5, 2018, was set to end on January 31, 2018, and that at the end of the fixed-term the tenancy will continue on a month-to-month basis. The Tenancy agreement states that $1,900.00 in rent is due on the first day of each month and that a security deposit and a pet damage deposit were both paid by the Tenant in the amount of $950.00 each. In the hearing the Agents confirmed that the Landlord still holds this $1,900.00 in deposits.

The Agents stated that the tenancy ended on May 11, 2018, and that the Tenant provided her forwarding address to the Landlord in writing, by e-mail, on May 14, 2018. The Agents testified that condition inspections were completed with the Tenant at both the start and the end of the tenancy and that copies of the condition inspection reports were provided to the Tenant in compliance with the *Act* and the regulation.

The Agents testified that the Tenant failed to clean the rental unit at the end of the tenancy resulting in cleaning costs of $105.00. In support of this testimony the Agents provided photographs, a cleaning invoice, and a condition inspection report signed by the Tenant upon move-out indicating that the condition of the rental unit was largely dirty at the end of the tenancy. As a result, the Landlord sought $105.00 in cleaning costs.

The Agents testified that the rental unit was two years old and had been painted prior to the start of the tenancy. The Agents testified that the rental unit was undamaged and in good condition at the start of the tenancy and that it required repairs and repainting at the end of the tenancy at a cost of $945.00 due to damage by the Tenant and their pet(s). The Agents stated that there was scratching throughout the unit and that the walls required sanitization and repainting due to the scratching, damage, and pet urine. In support of this testimony the Agents provided a copy of the condition inspection report showing the condition of the rental unit at the start and the end of the tenancy, and an invoice for the damage repair, sanitization, and repainting. As a result, the Landlord sought $945.00 for these costs.

The Agents also stated that due to the request of the Tenant that the rental unit not be shown until after she moved out and the condition of the rental unit at the end of the tenancy, the rental unit could not be immediately re-rented. The Agents stated that an advertisement for re-rental of the unit was posted right away, but that they could not hold showings for the rental unit until after the Tenant move-out as per the Tenant's request. The Agents stated that they held many viewings, including evening viewings, and that the rental unit was subsequently re-rented effective June 15, 2018, resulting in a loss of rent in the amount of $950.00. However, the Agents stated that the Landlord is only seeking $823.00 for loss of rent.

No contradictory evidence or testimony was before me for consideration from either the Tenant or an agent for the Tenant.

Analysis

Section 7 of the *Ac*t states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #16 states that in order to determine whether compensation is due, the arbitrator may determine whether a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement, loss or damage has resulted from this non-compliance, the party who suffered the damage or loss can prove the amount of or value of the damage or loss, and the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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. Policy Guideline #1 states that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site and is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. It also states that the tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest and that if the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant.

Although Policy Guideline #1 states that tenants are not responsible for reasonable wear and tear to the rental unit or site, it defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the above, I find that the Tenant was required to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear. I do not find that animal urine and scratching throughout the rental unit from a pet constitutes reasonable wear and tear as defined by Policy Guideline #1, and as a result, I find that the Tenant breached section 37 of the *Act* when they failed to leave the rental unit reasonably clean and undamaged at the end of the Tenancy. Based on the testimony and documentary evidence before me from the Agents, I am also satisfied, on a balance of probabilities, that the Landlord suffered a loss in the amount of $1,050.00 as a result of this breach and that they acted reasonably to minimize any loss. As a result, I therefore find that the Landlord is entitled to the $1,050.00 sought for repair and cleaning of the rental unit.

Based on the testimony and documentary evidence before me, I am also satisfied on a balance of probabilities, that the Tenant's breach of section 37 of the *Act* resulted in a loss of rent by the Landlord, who was unable to show the rental unit until after the Tenant vacated and was also required to clean and repair the rental unit prior to its re-occupancy by a new tenant. As the Agents testified that they placed an advertisement as soon as possible, were able to have the unit re-rented by the 15th day of the month following the end of the tenancy, and are only seeking partial costs for the loss of rent suffered, I find that the Landlord has acted reasonably to mitigate their loss. I am also

satisfied based on the testimony and documentary evidence before me that the Landlord suffered a loss of at least $823.00 as a result of the Tenant's breach of section 37. As a result, I therefore find that the Landlord is entitled to the $823.00 sought for loss of rent. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recovery of the $100.00 filing fee.

The Landlord also sought retention of the $950.00 security deposit and the $950.00 pet damage deposit paid by the Tenant at the start of the tenancy against any amounts owed. Section 38 of the *Act* states that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. I accept the Agents' undisputed testimony that the tenancy ended on May 11, 2018, and that the Tenant's forwarding address was received by the Landlord in writing on May 14, 2018. There is no evidence before me that sections 3 or 4 (a) of the *Act* apply, or that the Landlord extinguished their right to file a claim against either deposit. Based on the above, and as the Landlord filed their Application seeking to retain the security and pet damage deposits for pet and other damage to the rental unit, among other things, on May 23, 2018, I find that the Landlord complied with section 38 (1) of the *Act*. As a result and pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to retain the $1,900.00 in deposits paid by the Tenant in partial recovery of the above noted amounts owed.

Based on the above, the Landlord is therefore entitled to a Monetary Order in the amount of $73.00; $1,873.00 for damage of loss and $100.00 for recovery of the filing fee, less the $1,900.00 in deposits held.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $73.00. 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: December 5, 2018

Residential Tenancy Branch