Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On November 6, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act.*

On February 12, 2018, the Landlord submitted an Amendment to the Application for Dispute Resolution seeking to clarify the request for compensation pursuant to Section 67 of the *Act*.

The Landlord attended the hearing with G.L. and A.L. attending as agents for the Landlord. The Tenant did not attend the hearing; however, I.H. attended as an advocate for the Tenant. All in attendance provided a solemn affirmation.

At the outset of the hearing, I.H. stated that he requested an adjournment in December 2018 as the Tenant would be out of town and unable to attend this hearing. He advised that this adjournment request was made to the Landlord's counsel, but it was not accepted. He then stated that the Tenant's representative was sick and unable to attend the hearing today, so he requested another adjournment. However, he was not able to explain the nature of this illness, explain how it prevented this person from being able to attend a teleconference hearing, explain how long this person had been ill for, or explain why another representative of the Tenant could not be present. The Landlord's counsel was asked his position on this adjournment request and he was not in favour of adjourning this matter.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As this hearing was scheduled months ago, as the Tenant had ample time to arrange to have someone attend this hearing, and as there was no compelling documentation as to the nature of this illness or why alternate arrangements for another representative of the Tenant could not be present, I find that adjourning the hearing would be prejudicial to the Landlord. As such, I did not grant the Tenant's counsel's request for an adjournment.

The Landlord advised that a Notice of Hearing package was served by registered mail on November 2, 2018 and I.H. confirmed that this was received. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

A.L. advised that the Amendment was served to I.H. on February 12, 2019 via email and I.H. confirmed that he received this document. Both parties agreed that service of documents via email was an acceptable method of service. As such, I am satisfied that the Amendment was appropriately served to the Tenant.

In addition, counsel for both parties acknowledged receiving the other party's documentary evidence that was served via email and they advised that they were prepared to respond to these documents. As such, I have accepted and considered all of the documentary evidence submitted when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

All parties agreed that the most current tenancy started on March 1, 2018 and the tenancy ended on August 24, 2018 when the Tenant gave up vacant possession of the rental unit. This date was confirmed and agreed upon in a previous hearing (the relevant file number is listed on the first page of this decision). Rent was established at $2,450.00 per month, due on the first day of each month. A security deposit of $1,100.00 was also paid.

A.L. advised that a move-in inspection report was conducted with the Tenant on February 22, 2016. The Tenant signed this report agreeing that the report accurately depicts the condition of the rental unit. A copy of this report was submitted as documentary evidence.

He advised that the date of the move-out inspection report was delayed because of the pending Dispute Resolution Hearing that the Tenant filed. When that hearing was completed, the Landlord organized the move-out inspection date for October 24, 2018, which the Tenant agreed with. This move-out inspection report was conducted with a representative of the Tenant on October 24, 2018. She signed this report agreeing that the report accurately depicts the condition of the rental unit at the time of move out. A copy of this report was submitted as documentary evidence as well. In addition, email correspondence was submitted as documentary evidence corroborating that the Tenant agreed that the move-out inspection would take place on October 24, 2018 at 10 AM.

I.H. advised that there was no agreement to postpone the move-out inspection report to a date after August 24, 2018 and the previous Dispute Resolution Hearing was filed primarily due to a lack of access to the rental unit. He reiterated that the tenancy ended on August 24, 2018. As well, he stated that the Tenant emailed a forwarding address to the Landlord on September 10, 2018. He submitted a copy of this email as documentary evidence.

A.L. advised that a forwarding address in writing, pursuant to the *Act*, was actually provided by the Tenant's representative on the move-out inspection report on October 24, 2018.

A.L. submitted that the Landlord is seeking compensation in the amount of **$200.00** for the cost of a strata fine due to the Tenant re-renting the unit on an Air BNB basis, contrary to the tenancy agreement. The strata manager had notified the Landlord of this unauthorized rental situation and G.L. had contacted the Tenant and warned them in writing to stop this practice. However, the strata company levied this fine against the Landlord as the Tenant did not discontinue this behaviour. The Landlord submitted a copy of her Statement of Account demonstrating the strata fine.

I.H. stated that as far as he knew, the Tenant did not know about this fine until the Amendment was received. However, he has no knowledge of this situation or of the warnings.

A.L. submitted that the Landlord is seeking compensation in the amount of **$25.00** for the cost of a replacement parking pass. He indicated that the parking pass was provided at the start of the tenancy, as indicated in the move-in inspection report; however, this was not returned at the end of the tenancy. Consequently, the Landlord had to purchase another one from the strata. She included documentation to support this position.

I.H. advised that the tenancy ended because the fobs were deactivated by the Landlord or the concierge of the building. He stated that the Landlord was aware that there was a problem with the fobs and that the Tenant paid for two new fobs at some point during the tenancy.

A.L. submitted that that the Landlord is seeking compensation in the amount of **$900.00** for the cost of cleaning the rental unit and **$20.00** for the cost of replacing broken plastic handles on the window frames. He referenced the invoice of the cost of cleaning and repairs and the receipt for

the window handles that were submitted to illustrate the extent of the work that was necessary to bring the rental unit to a re-rentable state. As well, he cited the signed move-out inspection report which indicated that a representative of the Tenant agreed to the condition of the rental unit upon move-out. He cited the pictures submitted as evidence to demonstrate the extent of the before and after condition of the repairs and clean up. The Landlord specifically advised that the rental unit was last painted in 2016, that the flooring is less than three years old, that the counter top is ten years old, that the windows were replaced in 2016, and that the door handle is approximately 12 years old.

I.H. advised that the Tenant was not provided with a sufficient opportunity to move out or clean the rental unit as the fobs were deactivated. He speculated that it is possible that other people could have been in the rental unit from August 24, 2018 to October 24, 2018 and could have caused the mess and the damage. He referenced an email from the Tenant indicating that the person who signed the move-out inspection report was not authorized to conduct this move-out inspection; however, he acknowledged that he advised the Tenant to send someone to attend the move-out inspection. It is I.H.'s position that the move-out inspection report is not valid as it was completed months after the tenancy ended. As well, the damage indicated by the Landlord should be considered reasonable wear and tear.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 35(1)(b) of the *Act* states that the Landlord and Tenant can inspect the condition of the rental unit and conduct the move-out inspection on another mutually agreed upon day. Section 36 outlines that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with Section 35. As the Tenant agreed in an email dated October 19, 2018 to attend the move-out inspection on October 24, 2018 and that "[The Landlord] and I have authorized [J.O.] my assistant, to do the move out inspection.", I am satisfied that both parties agreed to conduct the move-out inspection on a mutually agreed upon day and that this person was authorized to conduct the inspection on behalf of the Tenant. As such, I find that the Landlord complied with the *Act* and conducted a valid move-in and move-out inspection report. Therefore, the Landlord still retains a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the

Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.
While I.H. advised that a forwarding address was provided via email on September 10, 2018, I am not satisfied that this constitutes "in writing" as per the *Act*. However, the undisputed evidence is that a forwarding address in writing was provided to the Landlord on the move-out inspection report on October 24, 2018 and that the Landlord made this Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the deposit still, and as she complied with Section 38(1) of the *Act* by making a claim within 15 days, I find that she has complied with the requirements of the *Act*. Therefore, the doubling provisions do not apply.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

With respect to the strata fine, I have testimony from the Landlord and G.L. of the incidents surrounding this issue as well as documentation supporting that a fine was levied due to the unauthorized re-rental actions by the Tenant. In contrast, there is no contrary testimony or evidence provided to refute this claim. As such, I find that the Landlord's evidence, when weighed on a balance of probabilities, is more reasonable and compelling. Consequently, I find that the Landlord is entitled to a monetary award for the strata fine in the amount of **$200.00**.

Regarding the claim of $25.00 for the parking pass, as the undisputed evidence is that a parking pass was provided at the start of the tenancy and that it was not returned as per the signed move-out inspection report, I am satisfied that the Landlord is entitled to a monetary award for this in the amount of **$25.00**.

With respect to the Landlord's claims of $900.00 and $20.00 for the cost to clean and repair the rental unit, I find it important to note that the Tenant is responsible for leaving the rental unit in a re-rentable state at the end of the tenancy. The Landlord advised that no one occupied the rental unit as they were awaiting a decision on who had rightful possession of the rental unit. Other than I.H.'s speculation, there is no evidence before me that the Landlord had anyone occupy the rental unit between August 24, 2018 and October 24, 2018. As it was the Tenant's decision to vacate the rental unit, and as per the Tenant's evidence of J.O.'s statement that she "was responsible for removing the belongings left at unit 807, 1010 Richards Street, Vancouver at 12pm on Friday, August 24, 2018" and that she "attended the premises to carry out the moving out of the belongings left in the unit", I am satisfied that the Tenant or his representative were aware of their responsibilities to leave the unit in a re-rentable condition at the end of the tenancy. Furthermore, I find it important to note that J.O. signed the move-out inspection report agreeing to the condition of the rental unit.

However, when I review the Landlord's evidence with respect to the extent of the damage and cleanup required, I am not satisfied that her evidence supports the cost claimed by the Landlord. In addition, based on the pictures provided and given the age of the relevant affected areas of the rental unit, I am satisfied that the Tenant does bear the burden of how the rental unit was left, but not to the extent that the Landlord has claimed. As such, I am satisfied that the Landlord has established a claim in the amount of **$350.00** to rectify the issues claimed for.

As the Landlord was successful in this Application, I find that she is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the amount in arrears.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Strata fine	$200.00
Parking pass	$25.00
Cleaning and repairs	$350.00
Security deposit	-$1,100.00
Filing fee	$100.00
TOTAL MONETARY AWARD	**$425.00**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$425.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: March 11, 2019

Residential Tenancy Branch