Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S; MNDCL –S; MNRL –S; FFL

Introduction

This hearing dealt with a Landlord's Application for Dispute Resolution for a Monetary Order for unpaid utilities; damage to the rental unit; other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

Preliminary and Procedural Matters

This Application had been joined to another Landlord's Application for Dispute Resolution filed by the tenant in this case (as a sub-landlord) against the sub-tenant of the property (file number referenced on the cover page of this decision).

The landlord, the tenant/sub-landlord, and one of the sub-tenants appeared for the scheduled hearing. I made enquiries with all of the parties and I was satisfied that a sub-tenancy agreement had formed with the written consent of the owner.

Rule 2.10 of the Rules of Procedure deals with joining applications together. Rule 2.10 provides as follows:

> **2.10 Joining applications**
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> Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:
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> a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
> b) whether all applications name the same landlord;

c) whether the remedies sought in each application are similar; or
d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Since a true sub-tenancy agreement formed, and in keeping with Rule 2.10, I was of the view the two Landlord's Applications for Dispute Resolution filed by the landlord and the sub-landlord should not be joined.

In the circumstances before me, the landlords named in each of the Applications were different as two different tenancy agreements formed. A party making an Application for a Monetary Order has the burden to prove their case. As such, to leave the two Applications joined would create a conflict since the tenant/sub-landlord would be a respondent in one case and an applicant with the burden of proof in the other during the same hearing. Further, it is also conceivable that the claims made under one Application would be different or include additional claims than under the other Application. Accordingly, I ordered that the two Applications before me be un-joined or severed and heard separately.

I proceeded to deal with the Application filed by the owner against the tenant and I adjourned the Application filed by the sub-landlord against the sub-tenant. The sub-tenant was then exited the hearing.

Both the landlord and the tenant had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. I confirmed that both parties had served the other party with their respective hearing documents and evidence. I have considered all of the evidence submitted to me by both parties in making this decision.

In filing the Application, the landlord had sought compensation from the tenant in the sum of $2,164.64. In February 2019 the landlord submitted a revised Monetary Order worksheet that depicts a balance of $2,662.69 although she did not properly file an Amendment. The tenant indicated he was prepared to respond to the amounts claimed on the Monetary Order worksheet served in February 2019. During the heairng, however, the landlord reduced her claim to: $1,693.09. I amended the claim accordingly to $1,693.09.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amounts claimed, as amended?
2. Is the landlord authorized to retain or make deductions from the tenant's security deposit?

Background and Evidence

The eight month fixed term tenancy started on November 1, 2017 and was set to expire on August 31, 2018 and then continue on a month to month basis. The tenant paid a security deposit of $1,140.00. The rent was set at $2,280.00 payable on the first day of every month. Rent did not include utilities. The rental unit was described as an upper floor unit of a house and the basement suite was also tenanted. The tenancy ended on August 31, 2018.

It was undisputed that a move-in inspection report was completed by the landlord without the tenant present because the tenant was not available to perform the inspection. The landlord sent the tenant a copy of the move-in inspection report she prepared and the tenant indicated he agreed with the landlord's assessment of the condition of the property, with the exception of some marks and scratches on the fridge, via email. I noted that the move-in inspection report does not comply with all of the requirements for condition inspection reports provided in the Residential Tenancy Regulations; however, it was enhanced by use of photographs embedded in the document.

A move-out inspection report was completed by the landlord without the tenant present because the tenant was not available to perform the inspection despite efforts to find a mutually agreeable date/time. The landlord prepared the move-out inspection report without the tenant with his agreement and sent it to the tenant via email on September 14, 2018.

The tenant sent the landlord his forwarding address on October 26, 2018 via email. This Application was filed on November 7, 2018.

Below I have summarized the landlord's claims against the tenant, as amended, and the tenant's position.

House and yard cleaning: $460.00

The landlord submitted quotes to have the house cleaned and the yard cleaned for $300.00 and $160.00 respectively. The landlord testified that she performed the work herself since there was very little time between tenancies. The landlord estimated that she spent 9 hours cleaning the house and 7 hours doing yard work over two days.

The landlord described that the house was left vacant but not clean. The tenant acknowledged that he did not clean the house very well upon returning possession to the landlord and was agreeable to compensating the landlord $300.00 for house cleaning.

As for the yard work, the landlord submitted that there had been a sandbox on or near the deck and she spent hours digging rocks out of the space between the deck boards. Also, the lawn had to be mowed, debris removed and chalk removed from the sidewalk.

The tenant pointed to a lack of photographs of the yard to show its condition but acknowledged there appears to have been a sandbox on or near the deck during the sub-tenancy.

The move-out inspection report notes the following areas of the yard required attention: "Wash sidewalk chalk off of concrete Remove debris and sticks and leaves from lawn Mow lawn Remove rocks from back patio remnants of makeshift sandbox Attempt to remove white paint / hard goo from back patio"

Unpaid utilities (electricity and gas) -- $99.36

The landlord claimed to recover electricity usage for the period of July 5, 2018 – August 31, 2019 in the amount of $58.53 and gas usage for the period of July 3, 2018 – August 31, 2018 in the sum of $40.83. The tenant was agreeable to compensating the landlord these amounts.

Kitchen floor damage – 1133.73

The landlord submitted that the sub-tenants had placed a cooler with frozen food in it on the laminate floor while the fridge was undergoing repairs and the kitchen floor suffered water damage as a result.

The boards were warped and the boards had to be removed to deal with potential moisture/mould concerns under the laminate. The kitchen floor was relatively new, installed in April of 2017, and had an expected lifespan of 20 years.

The landlord originally obtained a quote to replace the damage kitchen floor in the sum of $2,102.94; however, the landlord was able to locate the matching floor boards at a home improvement store herself and had the damaged boards removed and the new boards installed for a lesser cost of $1,133.73. The landlord submitted that a significant section of the flooring had to be removed to access the damaged boards and then relayed. The landlord purchased three boxes of laminate flooring at a cost of $36.66 per box. The cost to remove and reinstall new boards cost $614.25 as supported by an invoice from a contractor. In addition, cabinetry had to be removed and reinstalled to facilitate the floor board replacement for which the landlord paid a contractor $409.50.

The tenant submitted that the damage occurred during the sub-tenancy. The sub-tenant informed him that the fridge was acting up and the tenant in turn reported it to the landlord. The tenant stated that after the fridge was repaired the landlord informed him that the flooring was damaged from a cooler placed on the floor. The tenant acknowledged that the floor boards appeared warped from the water damage and the repair was necessary. The tenant acknowledged that the cabinetry also needed to be removed to facilitate the repair.

The tenant submitted that at one time he thought he had facilitated an agreement with the landlord and the sub-tenant for the sub-tenant to locate replacement boards to minimize costs but the sub-tenant did not locate the replacement boards.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

House and yard cleaning

Section 37 of the Act requires the tenant leave the rental unit reasonable clean at the end of the tenancy. There was no dispute before me that the house required additional cleaning and the tenant was agreeable to paying the landlord $300.00 for house cleaning. Therefore, I award that amount to the landlord.

With respect to yard space, the tenancy agreement specifies which areas of the yard are for use by the tenant and the areas for use by the basement suite tenant. Accordingly, I am satisfied the subject yard space was for the tenant's exclusive use and the tenant was responsible for leaving the yard space reasonably clean and maintained as provided in Residential Tenancy Policy guideline 1.

Residential Tenancy Policy Guideline 1 provides, in part:

> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
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> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
>
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

The landlord's move-out inspection report supports her submission that yard work was required and I find the landlord's submission that she spent 7 hours of her time performing the yard maintenance to be within reason and her claim of $160.00 reasonable. Therefore, I award the landlord that amount.

Utilities

The landlord seeks to recover utility costs paid by the landlord for the last portion of the tenancy. The tenancy agreement provides that utilities are not included in the monthly rent. The tenant was agreeable to compensating the landlord the amounts claimed for electricity and gas and I award the landlord the amounts claimed.

Kitchen floor damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant, including a sub-tenant, due to their actions or neglect, but

a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Where a property is sub-let, the tenant remains liable to the landlord even if the damage is caused by the sub-tenant and the tenant may pursue the sub-tenant for compensation for damage caused by the sub-tenant.

In this case, I was provided unopposed evidence that the flooring of the kitchen was damaged during the sub-tenancy when the sub-tenants placed a cooler full of frozen food on the floor and water escaped causing the floor boards to warp. I find it negligent that a cooler with frozen food be left on the laminate floor and water allowed to escape onto the floor and since this negligence occurred during the sub-tenancy, the landlord may seek compensation to rectify the damage from the tenant.

I find it reasonable that the warped boards be removed so as to rectify the warping and deal with any moisture/mould issues that may arise under the boards from the water damage. The landlord replaced a section of flooring and not the entire flooring with a view to minimizing costs. The amounts claimed by the land rod were supported by invoices and receipts submitted.

In light of the above, I award the landlord I find the landlord entitled to the sum claimed for floor damage, as amended, in the sum of $1,133.73 and I award the landlord that amount.

Filing fee, security deposit and monetary order

The landlord was successful in this application and I award the landlord recovery of the $100.00 filing fee from the tenant.

The landlord is authorized to retain the tenant’s security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

The landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Cleaning and yard maintenance	$ 460.00
Utilities	99.36
Kitchen floor damage	1,133.73
Filing fee	100.00
Total award	1,793.09
Less: security deposit	1,140.00
Monetary Order for landlord	$ 693.09

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of $693.09 to serve and enforce upon the tenant.

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 20, 2019

Residential Tenancy Branch