Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERHILL3 APARTMENTS REALSTAR MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On December 13, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.H. and K.B. attended the hearing as agents for the Landlord. The Tenant attended the hearing as well. All parties provided a solemn affirmation.

The Landlord advised that they served the Tenant a Notice of Hearing package by registered mail in December 2018 and the Tenant confirmed that she received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

The Landlord advised that they served their evidence to the Tenant by registered mail on March 21, 2019 and the Tenant confirmed that she received this package, that she reviewed it, and that she was prepared to respond to it. While service of this evidence may not have complied with the time frame requirements of Rule 3.14 of the Rules of Procedure, as the Tenant was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that she served her evidence to the Landlord by registered mail in February 2019 and by hand in December 2018. The Landlord confirmed that they received this package. As service of this evidence complies with the time frame

requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it 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 unpaid rent?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- 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.

Both parties agreed that the tenancy started on April 1, 2018 as a fixed term tenancy of one year and ended when the Tenant gave up vacant possession of the rental unit on December 7, 2018. Rent was established at $1,070.00 per month, due on the first day of each month. A security deposit of $535.00 and a pet damage deposit of $535.00 were also paid. The Landlord submitted into evidence a tenancy agreement that was signed by both parties on March 2, 2018.

S.H. advised that the Tenant did not give written notice to end her tenancy but told them that she had to move to Alberta. As well, the Tenant stated that she had cause to end the tenancy and said she would vacate the rental unit on December 7, 2018. The Tenant was advised that she owed the pro-rated amount of rent for the seven days in December and the Tenant ended up paying $240.61. She told the Tenant that she could help find someone to take over the rental unit, but the Tenant would be responsible for any rental loss the Landlord suffers.

S.H. advised that her property management company took over for the previous property management company in September 2018 and she suspects that the previous

company lied to the Tenant about the rental unit being sound proof. Most of the Tenant's complaints of noise went to the previous property manager; however, any noise complaints that were directed to her were addressed. She advised that they were able to re-rent the premises on January 1, 2019 and are seeking compensation in the amount of **$829.39** for the lost rent in December 2018.

K.B. advised that the Landlord tried their best to cooperate with the Tenant. However, they did their best to re-rent the unit as quickly as possible by posting it on their website and by going through their waiting list to seek a new tenant. In addition, she stated that it was difficult to rent the unit as it was near Christmas.

The Tenant advised that she was looking for a quiet rental unit as she was completing her Master's program and working two jobs. The previous property management company advised her that the rental unit was sound proof, but it was not, and the behaviour of the neighbours created a toxic environment where the police were called twice. This affected her well-being and it is her belief that she had a right to end her tenancy due to a breach of a material term of the tenancy as a result of her loss of quiet enjoyment. She advised that she constantly went to the office to complain about the noise and she advised the Landlord twice in writing about the noise issues. She advised that she had found a tenant to rent the unit for December 1, 2018, but this person was not interested as the Landlord wanted to rent the unit for $105.00 more per month. She also placed an ad on the internet to try and rent the unit, and it is her belief that the Landlord did not work with her at all.

Both parties agreed that the Tenant provided a forwarding address in writing on December 7, 2018 on the move-out inspection report, and the Landlord subsequently made this Application.

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 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with

Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on December 7, 2018. As the tenancy ended on December 7, 2018, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on December 13, 2018. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to the pets. As the Landlord did not advise of any damage that was due to the pets, the pet damage deposit should have been returned in full within 15 days of December 7, 2018. As the Landlord did not return the pet damage deposit in full within 15 days of December 7, 2018, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenant a Monetary Order amounting to double the original pet damage deposit, or **$1,070.00**.

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."

Regarding the Landlord's claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from April 1, 2018 for a period of one year, yet the tenancy effectively ended when the Tenant vacated the rental unit on December 7, 2018. I find it important to note the Policy Guideline # 6 states the following:

> A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA and section 38 of the MHPTA a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish

> that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.

While the Tenant attempted to portray a scenario where it was urgent for her well-being to end the tenancy in the manner that she did, and that it was justified, I do accept that the Tenant advised the Landlord that she was subject to some loss of quiet enjoyment due to noise from neighboring units. However, I do not find that there is sufficient evidence submitted by the Tenant to demonstrate the significance of the disturbances nor is there any medical documentation to support her claim that her mental or physical well-being was affected. As such, I do not find that the Tenant has established that there was a breach of a material term which permitted her to end her tenancy early. Consequently, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45 of the Act. Furthermore, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

I am satisfied that the Tenant gave the Landlord minimal notification that she was ending the tenancy and vacating the rental unit. While the evidence does indicate that there was confusion about mitigation from both parties, I am satisfied that both parties erred. Even though the Tenant claims she had a potential new tenant interested in her rental unit for December 1, 2018, the Tenant advised the Landlord that she would not be vacating until December 7, 2018. Furthermore, I am not satisfied that the Landlord's attempts to re-rent the rental unit for a higher amount of rent would be considered mitigating their loss. However, as the Tenant did not establish that she was permitted to end the tenancy due to a breach of a material term, as she provided very little notice, as I am satisfied that the Landlord made attempts to re-rent the rental unit as quickly as possible after December 7, 2018, and as the Landlord re-rented the rental unit on January 1, 2018 at the same amount of rent, I am satisfied that the Tenant is responsible for the remainder of December 2018 rent.

Consequently, I grant the Landlord a Monetary Order in the amount of **$829.39** for rent owing for the month of December 2018.

As the Landlord was successful in their claims, I find that the Landlord 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 the security deposit in partial satisfaction of the amount awarded.

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

- The Landlord owes the Tenant $1,070.00 for double the pet damage deposit.
- The Tenant owes the Landlord $829.39 plus the $100.00 filing fee, totaling $929.39.
- However, as the Landlord has the security deposit of $535.00, this is offset from the amount the Tenant owes. (Tenant owes the Landlord $929.39 - $535.00 = $394.39)
- As the Landlord owes the Tenant $1,070.00, the Tenant's debt is offset from this. Therefore, the Landlord owes the Tenant $1,070.00 - $394.39 = **$675.61**.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$675.61** 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: April 12, 2019

Residential Tenancy Branch