Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL, FFL; MNDCT, MNSD, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenants' deposits, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and her agent and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 76 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add a claim to recover the cost of the filing fee paid for their application. The tenants filed an amendment form with their application. I find no prejudice to either party in making this amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits?

Are the tenants entitled to obtain a return of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018 when the tenants began paying rent but the tenants moved in on July 19, 2018, when they received the keys for the rental unit from the landlord. The tenancy ended on December 31, 2018. Monthly rent in the amount of $2,500.00 was payable on the first day of each month. A security deposit of $1,250.00 and a pet damage deposit of $1,250.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties for a fixed term from August 1, 2018 until July 31, 2019. No move-in condition inspection report was completed by the parties but a move-out condition inspection report was completed by the landlord only without the tenants present. The tenants provided a written forwarding address by way of a letter, dated December 14, 2018, that was sent by registered mail to the landlord and received on December 18, 2018.

The landlord seeks a monetary order of $3,340.94 plus the $100.00 application filing fee. She seeks $84.00 to replace kitchen taps where the handle was broken off. She provided a receipt for this cost. The tenants disputed this claim, stating that they showed the damage to the landlord before they moved out, but it was not fixed by her.

The landlord seeks $107.94 to replace two doors at the rental unit which were missing after the tenants vacated. She provided a quote of $53.97 for each door. The tenants disputed this cost, claiming that the doors were damaged when they were moving, they threw out the doors, they did not obtain the landlord's permission or give notice before they moved out, since the landlord told them not to contact her unless it was an emergency.

The landlord seeks $649.00 to repair damages in the rental unit herself with the assistance of her agent. She claimed that they had to mud and paint every wall because of large holes created by the tenants, and that they had to buy materials and spend hours repairing. The landlord did not provide any receipts or estimates for this cost. The tenants disputed this cost, stating that the holes in the wall were reasonable wear and tear which could have been repaired with hot water over the Magic Eraser areas.

The landlord seeks $2,500.00 for January 2019 rent because the tenants failed to pay this rent or provide 30 days' notice of their intention to move out. She stated that they received the tenants' notice on December 18, 2018, that they were leaving and she was unable to rent the unit for January 2019. She said that she posted advertisements for re-rental, did showings of the unit, had an open house, and posted the vacancy online. She claimed that she re-rented the unit to a new tenant for June 1, 2019. The tenants disputed this cost because they said that the landlord posted the unit for sale on January 5, 2019, as well as for rent, and that it was still up for sale now. They claimed that they were forced to move out of the rental unit because the landlord breached a material term of the tenancy agreement and failed to complete emergency repairs.

The tenants seek a monetary order of $8,947.38 plus the $100.00 application filing fee. The tenants seek the return of double the value of their security deposit, totalling $5,000.00, because they claimed that the landlord filed her application late, past the 15 days allowed, from the date the written forwarding address was given on December 14, 2018. The tenants maintained that they attended a previous RTB hearing on January 24, 2019, after which a decision of the same date was issued by a different Arbitrator. The file numbers for that hearing appear on the front page of this decision. The tenants

stated that the Arbitrator referred to the landlords' application being filed "several weeks" after the tenants' application on page 1 of the previous decision, so it was late.

The tenants seek $1,785.70 for the landlord breaching one of seven material terms of the tenancy agreement by failing to provide a consistent supply of water at the rental unit between August and December 2018. They calculated the loss by $2,500.00/7 services = $357.14 x 5 months = $1,785.70. They claimed that they were required to move out of the rental unit for this reason for the health and safety of themselves and their children.

The landlord disputed the above cost of $1,785.70, claiming that before the tenants moved in, she told them that there was limited water at the rental unit, that she could order a water truck when necessary but that it would take time, and to be proactive with watching the water level and letting the landlord know. The landlord claimed that when she was told about the water by the tenants, she acted right away, it was not the same issue each time, the tenants wanted the secondary storage and then changed their minds, and when the tenants wanted to order the water truck it took a couple of days to send the trucks.

The male tenant seeks $65.00 for a massage therapy visit due to a back injury that he suffered from falling through the deck at the rental unit. He provided a medical note, the massage therapy receipt, and photographs of the deck area. The landlord disputed this cost. The landlord's agent claimed that he was not told about any problems with the deck by the tenants, and that the male tenant told him that he was up on a ladder the day before. The landlord's agent said that the ladder may have caused the injury, not the deck fall.

The tenants seek their costs of moving in of $604.80, their cleaning costs upon moving in of $350.00 and their costs of moving out of $1,141.88. They said that they wanted a long term tenancy, so they signed the fixed term agreement with the landlords, but that they were forced to move out early in the middle of winter because the landlords breached the material term causing health and safety issues. They claimed that they spent a lot to move into the unit, to clean even though they initially agreed to do this, and to move out. They stated that the previous hearing decision documented that they moved for health and safety reasons because of the water. The landlord disputed these costs, stating that she did not breach a material term and she dealt with the water the best that she could when informed by the tenants.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondents in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

Fixed Term Tenancy

Section 45(3) of the Act states that if a landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenants give written notice of the failure, the tenants may end a tenancy effective on a date after the date the landlord receives the notice.

I find that the landlord notified the tenants before they moved in that there was limited water at the rental unit, to be proactive by watching the water levels, to inform her if there was a problem, and that it would take longer to order a water truck. I find that the landlord dealt with the water problems to the best of her ability when she was notified by the tenants, as not all issues were the same. Despite the fact that the tenants had issues with a continuous water supply, I find that the landlord completed their due diligence and were not negligent in addressing the water issues reported by the tenants.

Therefore, I find that there was no material breach of the tenancy agreement by the landlord, which would have allowed the tenants to terminate their tenancy prior to the fixed term end date.

Loss of Rent

I find that the landlord and tenants entered into a fixed term tenancy for the period from August 1, 2018 to July 31, 2019, as per the parties' written tenancy agreement.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

> *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> *(a) is not earlier than one month after the date the landlord receives the notice,*
>
> *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
>
> *(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on December 31, 2018. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of the parties' tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenants' intention to vacate the rental unit. The landlord testified that she posted advertisements and completed showings of the rental unit. The landlord is only claiming for one month's rental loss, despite the fact that the rental unit will be re-rented to a new tenant as of June 1, 2019.

Accordingly, I find that the landlord is entitled to one month's rent for January 2019 of $2,500.00. The tenants gave notice on December 14, 2018, which the landlord said that she received on December 18 and the tenants moved out on December 31, 2018.

This was not enough time for the landlord to re-rent the unit for January 1, 2019. The tenants are required to give at least one month's notice for a periodic tenancy and potentially longer for a fixed term agreement but the landlord is only claiming for one month's rental loss, which I find is reasonable.

Repairs and Damages

I award the landlord $84.00 to fix the kitchen taps at the rental unit. The landlord provided a receipt for this amount. I accept her testimony that the kitchen taps handle was broken right off and that the tenants caused this damage during their tenancy.

I award the landlord $107.94 to replace to two doors at the rental unit. The landlord provided an estimate for this amount. The tenants agreed that they threw out the two doors provided by the landlord with the rental unit, since they were damaged with holes from moving their belongings, without asking the landlord or telling them before they moved out. The tenants said that they were told not to contact the landlord except in the case of emergency; however, this does not permit the tenants to dispose of the landlord's doors without her permission or giving notice.

I dismiss the landlord's application for $649.00 to repair various damages inside the rental unit. The landlord failed part 3 of the above test as she did not provide receipts or invoices for this amount to demonstrate the costs that she incurred to repair the rental unit.

Since the landlord was mostly successful in her application, I find that she is entitled to recover the $100.00 application filing fee from the tenants.

Tenants' Application

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. The fact that the tenants chose to leave when they did, was up to them. The previous hearing decision specifically indicated at page 2 that "the tenants made the decision that they had to vacate the rental unit due to a lack of water." It does not state that the tenants were forced to move, that they were justified in doing so, or that there was a breach of any material term. I find that the tenants moved on their own accord, as noted above, so they are not entitled to compensation for move-in fees of $604.80, move-in cleaning fees of $350.00, move-out fees of $1,141.88, or any other costs for injury, disrepair, quality of life, safety or health.

As noted above, I find that the landlord did not breach a material term of the tenancy agreement due to the water issues at the rental unit. Therefore, I dismiss the tenants' application for $1,785.70 for breaching one of seven material terms of the tenancy agreement.

I dismiss the tenants' application for $65.00 in massage therapy fees for the male tenant falling through the deck at the rental property. I accept the landlord's agent's evidence that he was not told about any problems with the deck by the tenants, so he was unaware that anything needed to be repaired.

Security and Pet Damage Deposits

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on December 31, 2018. The tenants provided the landlord with a written forwarding address on December 14, 2018, which was received by the landlord by registered mail on December 18, 2018. The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the deposits to the tenants.

The landlord filed an application for dispute resolution to claim against the deposit originally on January 9, 2019, which was dismissed with leave to reapply by the Arbitrator at the previous hearing. The landlord's application was dismissed because it was not related to the urgent applications made by the tenants at the previous hearing. Therefore, I find that the landlord's original application on January 9, 2019, was within 15 days of the tenancy ending on December 31, 2018. Although the landlord's right to claim against the deposits for damages was extinguished for failure to complete a move-in condition inspection report, the landlord still made a claim for a loss of rent of $2,500.00, the value of both deposits together. Accordingly, I find that the tenants are not entitled to double the value of their deposits, only the regular return of $2,500.00.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlord.

The landlord continues to hold the tenants' deposits totalling $2,500.00. Over the period of this tenancy, no interest is payable on the deposits. As per the offsetting provisions of section 72 of the *Act*, I find that the landlord is entitled to retain the tenants' entire security and pet damage deposits totalling $2,500.00 towards their monetary award of $2,791.94, leaving a balance of $291.94 for a monetary order.

Conclusion

I order the landlord to retain the tenants' entire security and pet damage deposits totalling $2,500.00.

The remainder of the tenants' application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of $291.94 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: May 22, 2019

Residential Tenancy Branch