Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenant: MNSD FF
Landlord: MNR, MND, MNDC-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant originally filed their application January 08, 2019 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application ($100) - Section 72.

The landlord originally filed their application January 26, 2019 for Orders as follows and orally amended during the hearing;

1. A monetary Order for damage to the unit – Section 67
2. A monetary Order for loss – Section 67
3. A monetary Order for Unpaid rent – Section 67
4. An Order to keep the security deposit as set off – Section 38
5. An Order to recover the filing fee for this application ($100) - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute to no avail. The parties each acknowledged receiving the application and all evidence of the other. The parties had opportunity to present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for unpaid rent, damage to the unit, and loss?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

The relevant evidence in this matter is as follows. The subject tenancy began July 01, 2016 as a written tenancy agreement. The hearing had benefit of the written agreement provided solely by the landlord. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in the sum of $1600.00 which the landlord retains in trust. During the tenancy the payable rent was in the amount of $1600.00 due in advance on the first day of each month.

The tenancy ended October 01, 2018 upon the tenant providing the landlord with notification by email on September 01, 2018 as their Notice to vacate. It must be noted that the tenant's notification of September 01, 2018 also included a statement informing the landlord of the email address they could use for returning the tenancy deposits.

The parties agree there was a *move in* inspection conducted by the parties at the start of the tenancy.

The parties agree there was a *move out* condition inspection scheduled and attended by both parties on October 01, 2018 but at which time the landlord chose not to populate the Condition Inspection Report (CIR) as the tenant did not have the rental unit keys with them. It is undisputed the tenant subsequently provided the keys to the landlord the afternoon of the same day.

Tenant's application

The tenant seeks the return of their security and pet damage deposits totalling $1600.00 pursuant to Section 38(6) of the Act, after they provided the landlord with their email address one month before they vacated for the landlord to electronically repay the tenancy deposits.

Landlord's application

The landlord testified they did not act to ensure a new tenant for October 2018 upon receiving the tenant's email notification to vacate one day later than prescribed by the Act, on September 01, 2018. However the landlord acknowledged receiving the notification. The landlord testified that their choice not to ensure a new tenancy or avert a loss of revenue for October 2018 was predicated on the tenant's notification to vacate being late, and therefore obliging the tenant to also pay the rent for the following month of October 2018. The landlord seeks $1600.00 rent for October 2018.

The landlord seeks $200.00 for replacement cost of a claimed missing microwave oven from the rental unit included in the tenancy agreement. The tenant denies they ever saw the claimed microwave oven and that they brought their own such oven to the tenancy. The landlord provided a copy of the tenancy agreement stating “microwave” as included in rent. They also provided photo images of a black microwave oven atop the kitchen counter taken 5 weeks before start of the tenancy, as well as the word “microwave” in the *move in* portion of the CIR. The landlord did not present evidence as to the age or condition of the oven, however provided evidence as to the replacement cost of $88.98 ($89.00) for a similar new oven.

The landlord’s orally amended monetary claim for damage of the rental unit seeks $2000.00 to compensate them for their insurance deductible to primarily repair water damage of the laundry room and bathroom floors purportedly caused by a slow leaking (versus spouting) washing machine. The landlord testified that water from the leaky washing machine caused damage to the floors over an extended period which the tenant knew of, or ought to have known of, however failed to inform the landlord. The landlord claims the tenant ignored the leaking water and as a result the chronic problem caused damage to the floors. The landlord provided evidence of the cost for repair of the damaged floors exceeding their claimed deductible. The tenant testified they were never aware that the washing machine was slowly leaking because the laundry machine and drier are enclosed within a cabinet in which solely the fronts of the machines are in view. The landlord provided photo image evidence of the described cabinetry enclosing the 2 machines side by side.

Analysis

*A copy of the Residential Tenancy Act, Regulations and other publications are available at **www.gov.bc.ca/landlordtenant**.*

On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant’s claim

I find that the tenancy ended October 01, 2018; and, that one month earlier on September 01, 2018 the landlord received an *email address* for eventual repayment of the tenancy deposits. I accept that by the time the tenant vacated the landlord was equipped with the means to electronically repay the deposits of the tenancy if they chose to utilize this method. However, I find that the landlord’s legal obligation pursuant to **Section 38(1)** of the Act to administer or act on the deposits is not triggered until the landlord receives the *tenant’s forwarding address in writing.* In this matter I find that

while it is permitted for the landlord to electronically transact to the tenant as prescribed by **Section 38(c)** of the Act, I find they may do so following the landlord's receipt of the tenant's forwarding address in writing. It must be noted that the tenant's own document evidence also clearly states the forgoing [**f) Forwarding Address Issue**]. As a result I find the tenant is not entitled to the doubling provisions of **Section 38** of the Act. The tenant's entitlement is limited to their original deposit amounts subject to any offsetting of the landlord's claims.

Landlord's claim

I find the landlord did not have sufficient reasonable cause to not complete the move out condition inspection with the tenant at the pre-arranged date and time, and in that failure their right to claim for *damage to residential property* was extinguished pursuant to **Section 36** of the Act. None the less I find the landlord retained the right to make a claim against the tenancy deposits for *unpaid rent.*

I accept the landlord's evidence that they accepted the tenant's email notification to end the tenancy as effective Notice despite it was not in compliance with **Section 52** of the Act, but also one day late. I find that while the Act requires tenants to give one full month's notice pursuant to **Section 45** that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice – in this case, October 2018. However, **Section 7** of the Act provides as follows:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the tenant clearly did not comply with the Act. However, the landlord's claim for any loss of revenue is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do whatever is reasonable to minimize the loss. I find the landlord has not provided proof showing what reasonable steps were taken to *mitigate or minimize* the potential loss of revenue for October 2018. Rather, the landlord testified that they determined to not do anything as they were confident the tenant was obligated to pay

rent for October 2018. As a result of the above I **dismiss** the landlord's claim for loss of rent revenue, without leave to reapply.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by **Section 7** of the Act, as above. The applicant, or landlord in this matter, must prove a loss exists and moreover prove the loss happened solely because of the actions or neglect of the tenant in violation to the Act. On preponderance of the evidence in this matter, I find that I prefer the evidence of the tenant over that of the landlord in finding that the tenant likely was not aware of the washing machine leaking water as the laundry machines were enclosed and a water leak likely not evident. As a result, I must **dismiss** this portion of the landlord's claim without leave to reapply.

I find that I prefer the landlord's evidence over that of the tenant's in finding the landlord has provided sufficient evidence to support that at the start of the tenancy the landlord's microwave oven was included as part of the rent, and that at the end of the tenancy it was not in the rental unit. As a result I find the landlord is due compensation for the oven. In the absence of the oven's age and condition prior to the start of the tenancy and the landlord's evidence respecting a replacement value of $89.00, I grant the landlord the nominal amount of **$45.00**, without leave to reapply.

As both parties were in part successful in their applications they are equally entitled to their filing fees from the other party, which mathematically cancel and therefore are not reflected in calculation. The tenant's deposits will be offset from the award made herein.

Calculation for monetary order

Tenant's tenancy deposits held in trust	1600.00
Less: Landlord's award for microwave oven	*-45.00*
Monetary Order / tenant	**$1555.00**

I Order the landlord may retain $45.00 from the tenancy deposit of $1600.00 in partial satisfaction of their claim, and **I grant** the tenant a Monetary Order under Section 67 of the Act for the balance of their deposits in the amount of **$1555.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The parties' respective applications in part have been granted and the balance of their claims dismissed without leave to reapply.

This Decision is final and binding.

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 01, 2019

Residential Tenancy Branch