Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDCL-S FFL
Tenant: MNSD MNDCT FFT

Introduction

This hearing dealt with applications from both the tenants and the landlords pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenant applied for:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- recovery of the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's applications and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement? If so, are the landlords entitled to retain all or a portion of the security deposit in satisfaction of their claim against the tenant? If not, is the tenant entitled to the return of all or a portion of the security deposit, or a doubling of the security deposit?
Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?
Is either party entitled to recover the filing fee for their application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began as a 3-month fixed-term on September 1, 2018, with a scheduled end date of November 30, 2018. The tenancy converted to a month-to-month tenancy after that date.
- Monthly rent of $1,400.00 was payable on the last day of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of $700.00 which continues to be held by the landlords.

On December 30, 2018 the tenant sent the landlord an email regarding rent payment for January and also stated in the email “I wanted to tell you that January 31st will be my last day”.

On January 4, 2019, the landlord responded to the tenant’s email to request that the tenant provide written notice to end tenancy in accordance with the *Act*. The tenant testified that on January 16, 2019, he left a written notice to end tenancy for the landlord in the rental unit. The tenant stated that he left the rental unit on January 16, 2019 but returned on January 28, 2019 to clean the rental unit and return the keys to the landlord. The tenant testified that he had informed the landlord that the letter was left for him in the rental unit. However, the landlord testified that he did not access the rental unit until

January 28, 2019, therefore, the landlord claimed he did not receive the tenant's written notice to end tenancy until January 28, 2019. The landlord confirmed that he received the tenant's forwarding address on that date as it was provided in the tenant's notice to end tenancy.

On the February 13, 2019, the landlord filed an Application for Dispute Resolution to retain the tenant's security deposit against $1,400.00 in rent for the month of February 2019 as the landlord testified that despite his efforts to re-rent the unit earlier, he was unable to find a new tenant until March 1, 2019. The landlord submitted documentary evidence in support of his testimony pertaining to his efforts to re-rent the unit.

The landlord also sought costs of $336.00 for carpet cleaning and general cleaning of the rental unit. The landlord submitted photographic evidence dated February 20, 2019 in support of his claim. The landlord also completed a move-out condition inspection on February 11, 2019 without the tenant's attendance and submitted a copy of the report in evidence.

The landlord claimed that the tenant and the landlord participated in a condition inspection at move-in on September 1, 2018, and submitted a copy of the condition inspection report which shows that the tenant's first and last initials are written in the spot provided for tenant's signature at move-in. The landlord could not recall the exact date, but estimated that he provided a copy of the move-in condition inspection report to the tenant between September 1 and 8, 2019.

The tenant denied that it was his signature on the move-in condition inspection report and testified that he did not sign the report nor did he receive a copy of the report for 10 to 15 days after move-in, in contravention of the Residential Tenancy Regulations.

The tenant disputed the landlord's claim for cleaning costs and claimed that he left the rental unit in a clean condition. The tenant submitted photographic evidence in support of his claim.

The tenant sought a claim for compensation of $2,000.00 against the landlord for a lack of heat and cable during the tenancy. The tenant confirmed that he never provided the landlord with notice of his concerns in writing during the tenancy, only verbally.

The landlord disputed that the tenant ever voiced complaints regarding heat or cable during the tenancy.

Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. A claimant is not eligible for compensation that is found to be a penalty against the other party, as opposed to an actualized loss. Finally, it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:*
>
> - *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> - *loss or damage has resulted from this non-compliance;*
> - *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
> - *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

I have addressed the two parties' claims separately below.

Landlord's Claim

The landlord has claimed that the tenant failed to provide proper notice to end the month-to-month tenancy in contravention of section 45 of the *Act*, which provides in subsections (1) and (4), as follows:

> (1) A tenant may end a periodic 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, and
>
> (b) 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.
>
> …
>
> (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* requires:

> In order to be effective, a notice to end a tenancy **must be in writing** and must
>
> **(a) be signed and dated by the landlord or tenant giving the notice,**
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
>
> (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
>
> (e) when given by a landlord, be in the approved form.
>
> **[My emphasis added]**

In this case, the tenant provided the first notice to end tenancy by email, not in writing, nor did the tenant sign the notice. The tenant did not provide the landlord with a written, signed notice to end tenancy until January 2019. Therefore, the tenant's notice would not be effective until the end of February 2019.

As such, based on the above reasons, I find that the tenant was responsible for rent for the month of February 2019 due to his failure to provide notice to end tenancy in compliance with the *Act*.

I find that the landlord submitted sufficient evidence that he attempted to mitigate the loss of rent for February 2019 by making reasonable efforts to re-rent the rental unit.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has met the burden to prove his claim and is entitled to a monetary order for $1,400.00 for rent for the month of February 2019.

The tenant disputed receiving a copy of the move in condition inspection report within seven days after the condition inspection was completed, and the landlord failed to provide corroborating evidence that he served the tenant with the report within the time limits required by Residential Tenancy Regulation 18(1)(a), which requires that the landlord must give the tenant a copy of the signed condition inspection report within seven days after the condition inspection is completed, in the case of a move in condition inspection report, as follows, in part:

> 18 (1) The landlord must give the tenant a copy of the signed condition inspection report
> (a) of an inspection made under section 23 of the *Act*, **promptly and in any event within 7 days after the condition inspection is completed**…
>
> **[My emphasis added]**

As such, I find that the landlord extinguished his rights to file a claim against the security deposit for the cost of carpet cleaning and general cleaning, as set out in section 24(2) of the Act, which states:

> (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> (a) does not comply with section 23 (3) [2 opportunities for inspection],
> (b) having complied with section 23 (3), does not participate on either occasion, or
> **(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

[My emphasis added]

This is further explained in Residential Tenancy Policy Guideline 17. Security Deposit and Set off, which states, in section B, paragraph 7:

> *The right of a landlord to obtain the tenant's consent to retain or **file a claim against a security deposit for damage to the rental unit is extinguished** if:*
> - *the landlord does not offer the tenant at least two opportunities for inspection as required10 (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
> - *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*
>
> **[My emphasis added]**

Given that the landlord was found to have extinguished his rights to file a claim against the security deposit, the landlord was required to return the security deposit to the tenant within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, as explained in section C, paragraph 3 of Policy Guideline 17, as follows:

> *Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit:***
> - *if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
> - ***if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;***
> - *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
> - *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
> - *whether or not the landlord may have a valid monetary claim.*
>
> **[My emphasis added]**

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord extinguished his rights to claim against the security deposit and therefore was required to return the security deposit to the tenant in accordance with section 38(1) of the *Act*.

Section 38(6) of the *Act* sets out the consequences for a landlord that fails to comply with section 38(1) of the *Act*, as follows:

(6) If a landlord does not comply with subsection (1), the landlord
  (a) may not make a claim against the security deposit or any pet damage deposit, and
  (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As such, in accordance with section 38(6) of the *Act*, I find that the landlord may not claim for cleaning damages against the security deposit, and further, I find that the landlord must return the $700.00 security deposit to the tenant and pay the tenant compensation equivalent to the amount of security deposit. As such, I dismiss the landlord's claim on this issue and I find that the tenant is entitled to a monetary award of $1,400.00 which is the equivalent of double the security deposit.

Tenant's Claim

The tenant has claimed that the landlord failed to provide adequate heat or cable service during the tenancy, for which the tenant is seeking compensation of $2,000.00

However, the tenant confirmed that he never provided the landlord with notice of any issues with services in writing during the tenancy, nor did the tenant file an Application for Dispute Resolution during the tenancy to request the provision of services required by the tenancy agreement or the Act, as set out in section 27 of the *Act*.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenant's actions in failing to request in writing that the landlord address the heat and cable service, and failing to file an application for dispute resolution constituted a failure to mitigate claimed losses by the tenant.

Given the above, I find that the tenant has not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenant's claim has no merit due to

insufficient evidentiary proof that they took reasonable efforts to mitigate their loss by notifying the landlord in writing or filing an application for dispute resolution to address the inadequate heat and cable service, at any point during the tenancy. Therefore, the tenant's claim for retroactive compensation on these grounds must be dismissed without leave to reapply.

Security Deposit and Set Off of Claims

The landlord continues to hold the $700.00 security deposit.

As I have found that the landlord is entitled to a monetary award of $1,400.00 for rental revenue loss for the month of February 2019, and as I have found that the tenant is entitled to the return of the security deposit and compensation equivalent to the amount of the security deposit, for a total of $1,400.00, in accordance with section 72 of the *Act*, these monetary awards are set off against each other and the security deposit which continues to be held by the landlord. Therefore, I order the landlord to retain the security deposit of $700.00 and I issue no monetary orders to either party in order to set off the awards against each other.

As the parties' claims were set off against each other, the parties shall each bear their own costs of the filing fee.

Conclusion

I order the landlord to retain the security deposit of $700.00. No monetary orders are issued as the parties' monetary awards are set off against each other.

The parties bear the costs of their own filing fees.

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: June 20, 2019

Residential Tenancy Branch