Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent was her property manager and had permission to speak on her behalf. This hearing lasted approximately 75 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Preliminary Issue – Adjournment Request by Tenant

At the outset of the hearing, the tenant requested an adjournment. He claimed that he did not have all of the landlord's evidence in front of him during this hearing. He stated that he did not have time to send in any evidence himself. He claimed that he was out of town at the time of this hearing, and would be for another week. He agreed that he found out about this hearing three months prior, but that he was busy, it was not at the top of his "priority list" and that he was next available for a hearing in September 2019.

The landlord opposed the tenant's adjournment request. She claimed that the tenant has known about the hearing since March 2019 and even before that in February 2019, when the landlord's evidence was sent to him in an effort to resolve her application. The landlord explained that she was busy as well but she made this application a priority. She confirmed that she and her agent were prepared to proceed with this hearing and had already waited a long time for it.

During the hearing, I advised both parties that I was not granting an adjournment of the landlord's application. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

The landlord filed this current application on March 14, 2019, over 3.5 months before this hearing on July 2, 2019. The tenant agreed that he had at least three months' notice of this hearing and that he did not submit evidence because he was busy and it was not a top priority for him. The tenant did not request an adjournment prior to this hearing date. The tenant was not out of town for an extended period of time.

I find that the tenant had ample time to produce evidence and witnesses for this hearing. The tenant was able to provide verbal testimonial evidence at this hearing and respond to the landlord's submissions. I find that a further delay in the hearing date would prejudice the landlord, who was ready to proceed, produced evidence, and opposed the tenant's adjournment request.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to rental unit, and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

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 the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2018 for a fixed term of one year ending on January 31, 2019. The tenant vacated the rental unit on December 31, 2018. Monthly rent of $1,795.00 was payable on the first day of each month. A security deposit of $897.50 was paid by the tenant and the landlord applied this deposit towards half of the balance of unpaid rent for December 2018. Both parties signed a written tenancy agreement.

The landlord claimed that she was the co-owner for the rental unit, along with her then-husband, in 2009. She explained that in July 2018, she became the sole owner of the rental unit, when the property was transferred to her from her ex-husband.

The landlord seeks a monetary order of $2,403.04 plus the $100.00 application filing fee. The landlord removed her claim to retain the tenant's security deposit of $897.50 towards December 2018 rent, because it was already done prior to the hearing, and both parties agreed the landlord could keep the deposit for that reason.

The landlord seeks $1,795.00 for a loss of January 2019 rent, $173.25 for carpet cleaning, $30.00 to change locks, $112.47 and $22.32 for gas costs, $120.00 for house cleaning, $100.00 for garbage disposal, and $50.00 for snow removal.

Analysis

I note that, throughout the hearing, the landlord and her agent seemed to be confused by their own monetary claim details. They frequently went back and forth in testimony, asking each other who paid for what and when. The landlord and her agent were looking up information during the hearing, in order to answer my questions regarding work done and payments made. The landlord confirmed that she had not seen the rental unit until November 2018, after she obtained sole ownership of it in July 2018. The tenant confirmed that he dealt with another property manager for his entire tenancy and the landlord did not have knowledge of his tenancy or the rental unit.

For the reasons stated below, and on a balance of probabilities, I dismiss the landlord's entire application without leave to reapply.

I find that the landlord and tenant entered into a fixed term tenancy for the period from April 1, 2018 to January 31, 2019.

Subsection 45(2) of the Act sets out how a tenant 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*
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> > *(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 tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlord. In this case, the tenant ended his tenancy on December 31, 2018, prior to the end of the fixed term on January 31, 2019. I find that the tenant breached the fixed term tenancy agreement.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or 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 tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

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. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for a rental loss of $1,795.00 for January 2019, without leave to reapply. The tenant disputed this claim. I find that the landlord failed to mitigate her loss in her effort to re-rent the unit to prospective tenants. The tenant provided notice more than two months earlier on October 24, 2018, by email, before moving out on December 31, 2018, claiming that the former landlord property manager accepted his notice. I do not accept the landlord's submission that no formal written notice was given by the tenant so she was unable to show or advertise the unit. The landlord agreed that she accepted the tenant's voicemail message on December 13, 2018, indicating that he was leaving by the end of the month, and acted on that verbal notice by posting the unit for re-rental on December 14, 2018. The landlord agreed that no formal written notice was ever received from the tenant, but a move-out condition inspection was still conducted, sine the landlord accepted his notice and re-rented the unit.

Further, the landlord advertised the rental unit for a higher rent of $2,000.00, compared to the $1,795.00 that the tenant was paying during his tenancy. This may have detracted potential tenants and taken longer to rent the unit. The landlord claimed that the winter months were tough to re-rent the unit, yet she still advertised for a higher price, only dropping it to $1,900.00 after a "few weeks" of advertising. Ultimately, the landlord obtained a higher rent of $1,900.00 when the unit was re-rented to the new tenant on March 1, 2019, so the landlord was able to make a profit in rent from the new tenancy.

I dismiss the landlord's claim for carpet cleaning of $173.25, without leave to reapply. The tenant disputed this claim, indicating that he steam cleaned the carpet when he vacated. The landlord's invoice showed that this work was done on February 17, 2019, more than 1.5 months after the tenant vacated on December 31, 2018. The landlord

agreed that potential tenants walked through the unit during the above time period and caused boot marks to occur on the carpet. Although the landlord claimed that the tenant's pets caused fur on the carpet, the dirt from the carpet cannot all be traced back to the tenant, the landlord delayed in having the work done, and the landlord failed to provide a receipt to show that this amount was paid for by cheque and on what date it was paid.

I dismiss the landlord's claim for $30.00 to change the locks, without leave to reapply. The tenant disputed this cost. I accept the tenant's testimony that he did not change the key pad, only the door knob, which he paid for at his own expense. The landlord failed to provide a receipt for this cost, claiming that it was paid months later on March 12, 2019, when the invoice date is for December 31, 2018.

I dismiss the landlord's claim for a loss of gas utility costs of $112.47 and $22.32 in January 2019, without leave to reapply. The tenant disputed this cost, claiming that he turned the lights off and kept the heat down when he left. When I asked the landlord how or when these amounts were paid, she said that she gave the payment to her agent. Her agent was unsure and then claimed that the amounts were paid by cheque on February 12, 2019, but no proof was provided. Further, I find that the tenant is not responsible for January 2019 gas utility costs because he provided ample notice to vacate in October 2018, as noted above.

I dismiss the landlord's claim for house cleaning of $120.00, without leave to reapply. The tenant disputed this cost, claiming that he cleaned before he moved out. The landlord did not provide an invoice for this cost or an explanation of the work done. The landlord provided a photograph of a cheque for the above amount, which does not indicate whether the cheque was cashed and if it was, when it was done. The cheque is dated for January 26, 2019, almost one month after the tenant vacated. The landlord provided photographs of the condition of the rental unit, but it does not indicate when the photographs were taken.

I dismiss the landlord's claim for garbage disposal of $100.00, without leave to reapply. The tenant disputed this cost, claiming that he disposed of all items, except for a desk that he left behind for the maintenance person who wanted it. The landlord provided photographs of some items, but it does not indicate when the photographs were taken. The landlord provided an invoice for $105.00 but no receipt to show what, if anything, was actually paid.

I dismiss the landlord's claim for snow removal of $50.00, without leave to reapply. The tenant disputed this cost, claiming that there was no snow to shovel when he vacated the rental unit. The landlord provided a photograph of snow, but it does not indicate when the photograph was taken or where it was taken. The landlord provided an invoice for $52.50 but no receipt to show what, if anything, was actually paid.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

The landlords' entire 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: July 11, 2019

Residential Tenancy Branch