Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, 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, utilities, 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 tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "first hearing" on May 9, 2019 lasted approximately 37 minutes and the "second hearing" on July 30, 2019 lasted approximately 75 minutes.

The landlord, tenant RC ("tenant"), and the tenants' agent attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Tenant NC" did not attend both hearings. The tenant confirmed at the second hearing that he had permission to represent his brother, tenant NC, as an agent (collectively "tenants"). At both hearings, the tenant confirmed that his agent, who is the tenants' mother, had permission to speak on the tenants' behalf. The tenants' agent did not testify at the first hearing, but did at the second hearing.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on May 9, 2019 was adjourned by consent of both parties. By way of my interim decision, dated May 9, 2019, I adjourned the landlord's application to the second hearing date of July 30, 2019, when the tenants' application was already scheduled. I also provided

service directions to both parties, as noted in my interim decision. At the second hearing, both parties confirmed receipt of my interim decision after the first hearing.

At both hearings, 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.

At the second hearing, both parties confirmed receipt of the other party's evidence served after the first hearing, as per my interim decision. In accordance with sections 88 and 90 of the *Act*, I find that both parties were duly served with the other party's further evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to retain the tenants' security deposit?

Are the tenants entitled to the return of double the amount of their security deposit?

Is either party entitled to a monetary order 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?

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 September 7, 2018 and ended on December 31, 2018. Monthly rent in the amount of $2,250.00 was payable on the first day of each month as per the tenancy agreement but the tenants received a monthly rent reduction of $300.00, so they paid $1,950.00 to the landlord each month. A security deposit of $1,125.00 was paid by the tenants and the landlord continues to retain this deposit in full. Move-in and move-out condition inspection reports were completed for this tenancy. A forwarding address was provided by the tenants to the landlord by way of the move-out condition inspection report on December 31, 2018. The landlord did not have written permission to keep any amount from the tenants' security deposit. The rental unit was the lower level of a house, where three tenants, including the two tenants named in this application, and a "third tenant" not named in either party's application, were residing. All three tenants signed the written tenancy agreement with the landlord.

The landlord confirmed that she filed her application to retain the tenants' security deposit on January 14, 2019. The landlord provided a receipt for the payment of the filing fee, which confirms the above. The tenant claimed that he received the landlord's application after January 16, 2019, when it was stamped by the RTB.

The landlord seeks a monetary order of $2,772.52 plus the $100.00 application filing fee. The landlord seeks hydro electricity utilities of $290.90 for which she provided bills and calculated her own prorated amounts, which the tenants agreed to pay during the hearing. The landlord seeks water utilities of $171.32 for which she provided bills and calculated her own prorated amounts from October to December 2018, of which the tenants agreed to pay $69.80 based on their own calculations.

The landlord seeks $40.30 to replace the deadbolt for the rental unit, because the third tenant did not return his keys, even though the two tenants did, as confirmed by the landlord. The tenant disputed this cost, claiming that the tenants returned their keys and they were not responsible for the third tenant's failure to do so.

The landlord seeks $125.00 for a late rent fee for October 2018, claiming that the rent was late, and the tenancy agreement addendum indicates that late rent will be charged at $25.00 per day. She stated that she charged $150.00 and the tenants only paid $25.00, so the balance owing was $125.00. The tenant disputed this cost, stating that the law only allows for a maximum charge of $25.00 for late rent, which the tenants paid.

The landlord seeks $195.00 for a re-rental fee. She said that she has not yet incurred this cost or paid it, as the unit has not been re-rented. She claimed that she gets help from a friend for a 10% cost, but she did not have proof or a breakdown of this fee. The tenants disputed this cost, claiming that the landlord has not paid it and there is no proof of same.

The landlord seeks $1,950.00 for January 2019 rent loss. She said that the tenants provided late notice in December 2018 to move in January 2019 but they left on December 31, 2018. She maintained that the third tenant gave notice in November 2018 to move out but the two tenants were supposed to stay. She stated that she was unable to rent the unit during this time. The tenants dispute this cost, claiming that the landlord did not even attempt to show the unit in November or December 2018 while they were living there, and they gave notice in November 2018 to leave.

The tenants seek a monetary order of $5,660.93 plus the $100.00 filing fee. The landlord disputes their entire application. The tenants seek the return of double their security deposit of $1,125.00, totalling $2,250.00.

The tenants seek $36.75 for having to stay one night in a hostel because the rental unit was not ready until September 7, 2018, rather than September 1. The tenant stated that the landlord told him in August 2018 that the unit would be ready for the first week of September 2018. The

landlord denied this, stating that she told the tenants that the rental unit was under construction, it was out of her control, and she did not promise for it to be ready for the first week of September 2018.

The tenants seek the return of their rent of $623.50 prorated for September 2018 and $825.00 for each month from October to December 2018, totalling $3,098.50. The tenant said that the tenants did not have a kitchen in the rental unit for the entire tenancy. He maintained that the landlord agreed to give them a 50% rent reduction verbally, that she only gave them a $300.00 rent reduction which they accepted under "threat of eviction," and that she owed them the remaining amount which they were afraid to collect during the tenancy. The landlord disputed this cost, claiming that she only agreed to a $300.00 per month rent reduction which was given to the tenants during each month of their tenancy for the missing kitchen. She said that she would never agree to a 50% rent reduction just for a missing kitchen. She explained that the tenants saw the unit before they moved in, she informed them it was under construction, they chose to live there, and they knew about the missing kitchen which was out of her control for when the contractors came.
The tenants seek $78.80 for two ferry trips to visit their family during the winter holidays, $146.88 for gas, and $50.00 for their friend's vehicle maintenance. The tenant claimed that the tenants were forced to move out of the rental unit because they did not have a kitchen and that whenever they asked for a timeline from the landlord, she did not provide it to them. The landlord disputed this cost, stating that the tenants saw the unit before they moved in, she informed them it was under construction, they chose to live there, and they knew about the missing kitchen which was out of her control for when the contractors came.

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 applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant 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 respondent 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlord $69.80 of the $171.32 claimed for water utilities and $290.90 for the electricity hydro utilities. The tenants agreed to pay these amounts during the hearing. I find

that the tenants are required to pay utilities in addition to their rent, as agreed by them in the written tenancy agreement which they signed.

I find that the landlord is not entitled to the full $171.32 for the water utilities. The tenants disputed this cost. The landlord failed to provide the remaining water utility bill from December 2018 to the tenants or with her application. The landlord said that she received it after she filed her application so she could not provide it. However, the landlord served other evidence to the tenants in July 2019, shortly before the second hearing date, as I allowed it as per my interim decision after the first hearing, so she had ample time to do so. I also find that the landlord provided confusing testimony about how she prorated the amount for December 2018 and calculated the tenants' portion of what was due, as the tenants did not know what they owed since the landlord did not disclose all of the bills to them.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application, without leave to reapply.

I dismiss the landlord's application for $195.00 for the re-rent fee. The tenants disputed this cost. The landlord did not provide an invoice or a receipt for this amount. The landlord did not incur this cost and may not incur this cost, as she confirmed that it has not been charged to her and she has not paid it since the unit has not been re-rented.

I dismiss the landlord's application for $40.30 for a new deadbolt for the rental unit. The tenants disputed this cost. I find that the landlord agreed that the tenants returned their keys when they vacated the rental unit and they are not responsible for a new deadbolt. The landlord claimed that the third tenant living there, that is not named in either party's application, did not return his keys when vacating. I find that the tenants returned their keys, the landlord did not give notice to the third tenant that he did not return it or that she was filing this application, and the landlord treated the third tenant as a separate tenant for giving a notice to end tenancy to vacate the rental unit.

I dismiss the landlord's application for the late rent fee of $125.00 October 2018. The tenants disputed this cost. The landlord confirmed that the tenants already paid $25.00 for the late rent fee for October 2018. Section 7(1)(d) of the *Regulation* allows a maximum of $25.00 for a late rent fee to be charged by a landlord, which I find has already been paid by the tenants. Therefore, the landlord's provision in the parties' written tenancy agreement addendum that late rent can be charged at $25.00 per day until the 5^{h} day, is illegal and unenforceable.

I dismiss the landlord's application for January 2019 rent loss of $1,950.00. The tenants moved out on December 31, 2018. The landlord was aware that the tenants were moving as per multiple emails she said she received from them in November and December 2018. The landlord claimed that only the third tenant provided notice to move in November and that the tenants did not say anything until December 2018, giving less than one month's notice. However, I find that the landlord failed to mitigate her losses and provide proof of her efforts to

re-rent the unit, as she did not provide copies of advertisements posted, how many showings were done, and she still has not re-rented the unit.
Since the landlord was mainly unsuccessful in her application, I find that she is not entitled to recover the $100.00 application filing fee from the tenants.

Tenants' Application

I dismiss the tenants' application for ferry costs of $78.80 for returning home to visit their family for the holidays. The tenants chose to visit their family and this is not a cost to be borne by the landlord, regardless of when the tenants vacated the rental unit.

I dismiss the tenants' application for gas costs of $146.88 and vehicle maintenance costs of $50.00. The tenants failed to provide receipts to prove these amounts. I also find that the tenants voluntarily vacated the rental unit and the landlord is not responsible for their move.

I dismiss the tenants' application for $36.75 to stay in a hostel for one night on September 4, 2018, because the rental unit was not yet ready for them to move into. The tenants chose to rent this unit for September 7, 2018. They could have found another place and avoided the hostel cost. Further, they did not provide a proper invoice or receipt showing that the hostel room was for them for that one night, rather than for someone else or for a holiday visit, as no names or other information was included on their receipt.

I dismiss the tenants' application for a return of their rent of $623.50 for September 2018 and $825.00 for each month of October, November and December 2018. I find that the tenants were aware of the condition of the rental unit under construction before they moved in, they viewed the unit and saw the missing kitchen, they chose to wait to move in on September 7, 2018, and they still signed a written tenancy agreement with the landlord. I find that the tenants agreed to a $300.00 per month rent reduction, as confirmed by both parties during the hearing, which they received each month. I do not accept the tenants' allegation that the landlord agreed to a 50% rent reduction under "threat of eviction," as the tenants chose to stay and did not provide written proof of this agreement, which the landlord denied.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit 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)).

I make the following findings based on a balance of probabilities. The tenancy ended on December 31, 2018. The tenants provided a written forwarding address to the landlord on December 31, 2018, by way of the move-out condition inspection report. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenants. However, the landlord filed her application on January 14, 2019, as per the filing fee receipt which was paid and accepted on that date, within 15 days of December 31, 2018, to claim against the deposit. Although the application was processed on January 16, 2019 and the tenants received it thereafter, it was filed on January 14, 2019, when the filing fee was paid.

Therefore, I find that the tenants are not entitled to receive double the value of their security deposit, only the regular return of $1,125.00. I order the landlord to retain $360.70 from the tenants' security deposit for the utilities that the tenants agreed to pay, leaving a balance owing to the tenants of $764.30.

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.

Conclusion

I order the landlord to retain $360.70 from the tenants' security deposit.

I issue a monetary order in the tenants' favour in the amount of $764.30 against the landlord. 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.

The remainder of both parties' applications are 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: August 07, 2019

Residential Tenancy Branch