Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S; MNDCL – S; MNSD, MNDCT, FFL, FFT

Introduction

This hearing was scheduled to deal with monetary cross applications. The landlord applied for authorization to make deductions from the tenant's security deposit for compensation for damage to the rental unit and unpaid utilities. The tenant applied for return of double the security deposit and compensation payable where a landlord does not use a rental unit for the purpose stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord was represented by an agent and an interpreter appeared along with the agent. The male tenant was also present.

I explored service of hearing documents and evidence upon each other. The landlord had named two co-tenants on the landlord's application and the landlord's agent was uncertain as to how the landlord's documents were served upon the tenants. The tenant testified that he received a registered mail package post-marked on July 18, 2019. The tenant stated the other tenant is his spouse and that she did not receive a registered mail package from the landlord.

The landlord had provided photographs of the registered mail receipt and envelope sent on July 18, 2019. There is only one registered mail package sent on July 18, 2019. An applicant is required to serve each respondent with a hearing package. In this case, the landlord sent only one package on July 18, 2019 instead of two. Since the male tenant appeared and confirmed he received the package sent on July 18, 2019 I was satisfied he was served by the landlord but I was unsatisfied the female co-tenant had been served. I informed the parties that I would exclude the female tenant as a named party and I amended the style of cause accordingly. Neither party had any objection.

The tenant testified that he sent his hearing package to the landlord by way of two registered mail packages sent on June 13, 2019: one to the landlord at the rental unit address and one to person who acted as the landlord's agent during the tenancy using the service address that appeared on the 2 Month Notice to End Tenancy for Landlord's Use of Property. A search of

the tracking numbers showed that both packages were successfully delivered. It also appeared from the landlord's evidence that she was attempting to respond to the tenant's claims for compensation. Therefore, I was satisfied the landlord was served with the tenant's Application for Dispute Resolution.

I proceeded to explain the hearing process to the parties and gave the parties an opportunity to ask questions about the dispute resolution process.

Since the landlord had filed the first Application for Dispute Resolution I started by hearing from the landlord's agent first. The landlord's agent that appeared for the hearing was not the same person who acted as the landlord's agent during the tenancy. In asking questions of the landlord's agent, through the Interpreter, concerning the terms of tenancy and basic information such as the amount of rent, security deposit and start and end dates of the tenancy, it was apparent very quickly that the landlord's agent had very little knowledge concerning the tenancy. The landlord's agent acknowledged that she was not provided any documentation by the landlord. I asked the tenant to provide me with the tenancy details, which he did.

I turned to the landlord's agent again and asked her whether she was prepared to present the landlord's claims. The landlord's agent stated that she had been instructed by the landlord to merely answer questions I may have and that the landlord expected that I would sort through all of the landlord's evidence to determine the landlord's entitlement to the compensation she claimed. I informed the parties that it is not upon me to sort through evidence, which I noted had been provided at various different times, and was unorganized and devoid of page numbers, and present the landlord's case.

The landlord's agent telephoned the landlord, who was overseas, and the landlord joined the hearing approximately 35 minutes after the hearing commenced. After the landlord appeared, the landlord presented her claims against the tenant, through the Interpreter.

On another procedural matter, the tenant was of the position that he had filed the first Application for Dispute Resolution. I noted that the landlord had filed an Application for Dispute Resolution on May 23, 2019 and the tenant had filed an Application for Dispute Resolution on June 5, 2019. The tenant stated that he was unaware of the landlord's Application for Dispute Resolution until it came in the July 18, 2019 registered mail package along with evidence. The landlord testified that she had sent her Application for Dispute Resolution to the tenant via registered mail in May 2019 but that it was returned because the tenant had provided an incorrect forwarding address on the move-out inspection report.

I noted that the landlord had provided a registered mail receipt dated May 25, 2019, including a tracking number. A search of the tracking number showed that the registered mail was returned to sender due to an error in the address.

I also noted that the forwarding address written on the move-out inspection report was different than the address the tenant provided on his Application for Dispute Resolution by one digit. The tenant implied the landlord must have altered the address on the move-out inspection report as he found it unlikely he would have written the address incorrectly; however, when I asked him what his current address is he confirmed that it was the address that was written incorrectly. The landlord denied altering the address the tenant had written on the move-out inspection report.

I noted that in making his Application for Dispute Resolution the tenant indicated he had scanned the move-out inspection report during the move-out inspection and he provided a copy of it as proof he provided a forwarding address to the landlord. The tenant's image he provided also shows the incorrect address was written on the move-out inspection report.

The tenant stated he had no other evidence to demonstrate the landlord altered the address he had written on the move-out inspection report.

Based on the above evidence and on the balance of probabilities, I was of the view the landlord had filed the first Application for Dispute Resolution and had sent it to the tenant via registered mail on May 25, 2019 using the forwarding address the tenant had provided in writing on the move-out inspection report. Accordingly, I was of the view that the landlord met her obligations to make a claim against the security deposit within 15 days of the tenancy ending and sending her claims to the tenant within three days of filing, as required, and that the delay in receiving the landlord's Application for Dispute Resolution was due to the tenant's error in writing his forwarding address on the move-out inspection report. Therefore, I find the tenant filed the cross-application and it was scheduled as such by the Residential Tenancy Branch.

Determining which party filed the original application and which party filed the cross application is relevant at times because the Rules of Procedure provides the following, in part, with respect to cross applications.

> **Making a cross-application for Dispute Resolution**
>
> **2.11 Filing an Application for Dispute Resolution to counter a claim**
> To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.
>
> <u>The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.</u>

In filing his Application, the tenant sought compensation with respect to two distinct compensation provisions under the Act: (1) return of double security deposit under section 38 of the Act and (2) compensation payable where a landlord does not use a rental unit for the

purpose stated on the 2 Month Notice to End Tenancy for Landlord's Use of property as provided under section 51 of the Act.

Since the original application pertains to claims against the security deposit, I was of the view that the tenant's request for doubling of the security deposit was related to the original application; but, that the claim for compensation under section 51 was not.

The tenant stated that when he filed his Application he was unaware the landlord had filed an Application for Dispute Resolution because he had not yet received it. While I accept that given the landlord had sent the landlord's application to the tenant using the incorrect forwarding address provided by the tenant, the Rules of Procedure also provides that I may severe unrelated issues contained in a single application under Rules 2.3 and 6.2.

Rules 2.3 and 6.2 provide as follows:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

> **6.2 What will be considered at a dispute resolution hearing**
> The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

[My emphasis underlined]

With respect to the tenant's claim made under section 51 of the Act, the tenant acknowledged that he was unfamiliar with section 51 or the Residential Tenancy Branch Policy Guidelines (policy guidelines 2 and 50) and that he understood all he had to prove was that the landlord listed the rental unit for sale after the tenancy ended.

I also noted that the tenant had also filed for compensation under section 51 of the Act only 20 days after the tenancy ended which may have been premature.

In light of the above, I found the tenant's claim for compensation under section 51 was not sufficiently related to the original application filed by the landlord or to the tenant's claim for doubling of the security deposit, and likely premature. Therefore, I severed that component of the tenant's claim and dismissed it with leave to reapply.

I clearly communicated to the landlord, through the landlord's interpreter, that the tenant's request for 12 months of compensation, as provided under section 51 of the Act, was being severed and dismissed with leave to reapply. The landlord confirmed that she may be served at the rental unit address by registered mail, claiming she still lives at the rental unit even though she was overseas at this time and the house has not yet been sold.

I encouraged both parties to familiarize themselves with section 51 of the Act and policy guidelines 2 and 50 and to consider obtaining independent legal advice.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage and unpaid utilities, as claimed?
2. Is the landlord authorized to make deductions from the security deposit?
3. Should the security deposit be doubled?
4. Award(s) for filing fees.
5. Disposition of the security deposit.

Background and Evidence

The parties entered into a tenancy that started on November 16, 2017. The tenants paid a security deposit of $1,300.00. The rent was originally set at $2,600.00 payable on the 16th day of every month and increased to $2,700.00 per month starting on November 16, 2018. The tenancy ended on May 15, 2019.

A move-in and move-out inspection report was completed, at least to some extent, at the start and end of the tenancy. The tenant did not give written consent for the landlord to keep any portion of the security deposit. The tenant indicated he did not agree with the landlord's assessment of the condition of the property on the move-out inspection report. The tenant wrote a forwarding address on the move-out inspection report although the address appearing on the move-out inspection report is inaccurate. The landlord continues to hold the security deposit pending the outcome of this proceeding.

Below, I have summarized the parties' respective positions with respect to the landlord's request to make deductions from the tenant's security deposit for damage and utilities.

1. Damage - $175.00

The landlord asserted that the tenants are responsible for stains on the master bedroom and office carpet, oil stains on the garage floor, and scratches on the washer/dryer. The landlord requested compensation of $175.00 for this damage, calculated as: $50.00 per stain multiplied by three, and $25.00 for the scratches on the washer/dryer.

The landlord pointed to photographs to demonstrate the tenants damaged the rental unit.

As for the amounts claimed, the landlord explained that it was determined to be a fair amount of compensation by way of an agreement between the landlord, the landlord's agent and the tenant at the move-out inspection. The landlord acknowledged she did not have any receipts to support the amounts claimed for damage.

The tenant responded by stating he did not agree with the landlord's assessment at the move-out inspection and pointed to the move-out inspection report where he noted his disagreement. The tenant stated the landlord asserted that the tenant had overused the washer/dryer during the tenancy because he had children but that the landlord did not bring up scratches. As for the carpet stains, the tenant stated that they were pre-existing. The tenant stated that when the tenancy started the landlord's furniture, an ivory dresser and a desk, among other things, were in the rental unit and when those pieces of furniture were eventually moved the stains were found underneath. As for the "oil stains" in the garage, the tenant stated that there was a black liquid where had had recyclables but that it was wiped up during the move-out inspection.

The landlord denied that she had furniture in the rental unit when the tenancy started.

The tenant provided a detailed description of moving a heavy ivory dresser out of the master bedroom and down the stairs after the tenancy started.

2. Water bills: $892.03

The landlord submitted that the tenancy agreement provides that the tenant would pay for the water bills. Both parties provided consistent testimony that the tenant was not provided demands for payment with respect to the water bills until the end of the tenancy. The water bills had been sent to the rental unit address by the city but the account was not in the tenant's name. The tenant would hold any mail addressed to the landlord other people that were not members of his family until the landlord's agent would come retrieve the mail periodically.

The landlord provided a calculation showing the amount of the water bills, less a portion in recognition of the landlord's use of water while she was staying in the basement suite, in the net amount of $893.02. The tenant stated he received this hand-written calculation but denied receiving the actual water bills issued by the city in the landlord's evidence. The landlord stated that she did give the tenant copies of the city water bills.

The tenant was of the position the landlord had waived entitlement to receive money from him for the water bills. The tenant stated that during the first year of tenancy he asked the landlord about the water bills and that in response she said "its ok" although he indicated he was uncertain as to what that meant. The tenant acknowledged he stopped asking about the water bills in the second year of the tenancy but that the landlord only brought it up at the end of the tenancy.

The landlord denied waiving her entitlement to seek payment for water bills from the tenant. The landlord stated that she was uncertain as to what the tenant asked or said to her when she said "it's ok". The landlord stated that she had set up "auto pay" on the water bills so that they would get paid automatically but that she did not obtain the water bills for a long time because they were being held by the tenant; however, the landlord also acknowledged that her agent

would pick up her mail from the tenant periodically. The tenant denied withholding the landlord's mail from her or her agent.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Unless there is a specific compensation provision provided in the Act, awards for all other types of compensation are provided in section 7 and 67 of the Act. An applicant making a claim and seeking an award under sections 7 and 67 must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's Application

1. Damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is undisputed that there were carpet stains on the carpeting at the end of the tenancy; however, the tenant was of the position the carpet stains were pre-existing.

The move-in inspection report prepared by the landlord does not indicate any stains on the flooring. Nor, is there any notation that there was furniture in the rental unit when the move-in inspection report was prepared. Also, the tenant signed the move-in inspection report indicating he agreed with the landlord's assessment. Section 21 of the Residential Tenancy Regulations provides that a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary.

There is one document dated November 12, 2017 indicating the tenant wanted the desk moved out of the rental unit; however, the parties provided disputed oral testimony as to whether there was still furniture in the rental unit when the tenancy started and the move-in inspection was conducted. I find this evidence is insufficient to constitute "a preponderance of evidence to the contrary". As such, I rely upon the move-in inspection report and I accept that the carpet stains were not pre-existing. However, I find the difficulty in the landlord claim is that she seeks $100.00 for the two carpet stains but has not provided me with evidence she suffered a loss in this amount. There is no receipt for carpet cleaning or cleaning solution. Nor, did the landlord indicate there was time spent trying to clean the stains.

As for the "oil stains" on the garage floor, the tenant stated the larger black liquid was not oil and that it was wiped up during the move-out inspection. Whether that is the case or not, I find the landlord did not demonstrate that she suffered a loss of $50.00 with respect to the spill. The landlord did not provide evidence that it was cleaned up or who cleaned it up or that it cost her $50.00.

Finally, with respect to the scratches on the washer/dryer the tenant denied responsibility for such, but in any event, I fail to see how the landlord determined that she suffered a loss of $25.00 with respect to the scratches.

The landlord had testified that she arrived at the amounts claimed with the tenant's agreement at the move-out inspection; however, the notes prepared by the landlord with respect to what transpired at the move-out inspection indicate the opposite. The landlord's notes indicate the landlord required $175.00 and the tenant objected. I find the landlord's notes to be consistent with the tenant's position during the hearing and as reflected on the move-out inspection report by the tenant indicating he did not agree that the report fairly represented the condition of the property. Therefore, I am unsatisfied the tenant had agreed to compensate this amount to the landlord and I do not make an award based on an agreement since it is evident there was no such agreement.

In light of the above, I find the landlord failed to prove or verify the amounts claimed against the tenant for damage and I dismiss this portion of her claim.

2. *Unpaid water bills*

The tenancy agreement provides that water was not included in the monthly rent. Term 3 in the tenancy agreement further stipulates that the tenants would register the utility accounts in their name, including the water bill.

It is undisputed that the tenants did not put the water bill in their name and the water was not being paid by the tenants during the tenancy.

It was also undisputed that there was a significant delay in seeking payment for water from the tenants although the parties provided various opposing reasons as to the reason for delay.

I was provided opposing oral testimony that the landlord waived orally waived entitlement to recover payment of water bills from the tenants when she said “its ok” to them and I find the opposing oral evidence does not satisfy me that the landlord waived her rights.

Based on what I see in the documentation, the tenants were required to put the water in their name and they did not which is a violation of the tenancy agreement. The rent they paid to the landlord did not include water and the water was paid by the landlord. I was provided disputed testimony that the tenants were provided with copies of the city water bills; however, the tenant were provided the landlord’s detailed calculations. I note that the landlord included the water bills in the evidence submitted to the Residential Tenancy Branch and the amounts of the water bills correspond to the amounts appearing on the calculation she provided to the tenant. The landlord’s calculations also take into account times when the landlord was residing in the basement suite. Therefore, I find the landlord has satisfied me that the tenants were obligated to pay for water in addition to rent and the landlord suffered the loss she is claiming and I grant the landlord’s request to recover $893.02 from the tenants.

Tenant’s application

I have considered the tenant’s request for doubling of the security deposit under his Application.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant’s written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenant provided a forwarding address on the move-out inspection report that was prepared on May 15, 2019. The landlord filed a claim against the tenant’s security deposit on May 23, 2019 and provided evidence that she sent the claim to the tenant via registered mail on May 25, 2019. The registered mail sent to the tenant on May 25, 2019 was returned because the address was accurate. As described in the “Preliminary and Procedural Matters” section of this decision, I find the tenant has failed to demonstrate the landlord altered the address appearing on the move-out inspection report and I accept that she sent the registered mail to the tenant at the address provided by the tenant. Therefore, I am satisfied the landlord met her obligation to make a claim against the tenant’s security deposit and send him a notice of her claim within the required time limits and I find the doubling provision does not apply in this case.

In light of the above, I deny the tenant's request for doubling of the security deposit. However, the tenants remain entitled to return of the single amount, less the deductions I authorize the landlord to make with this decision.

Filing fees

Section 72 of the Ac provides that I have discretion to award recovery of the filing fee to a party. A filing fee was paid by each party in making their respective applications and I make the following award(s).

The landlord was partially successful in her claims against the tenant and I award her recovery of one-half of the filing fee she paid, or $50.00.

The tenant was unsuccessful in establishing an entitlement to double the security deposit and I make no award to him for recovery of the filing fee he paid.

Disposition of the security deposit

I authorize the landlord to deduct from the security deposit the following amounts: $893.02 for the water bills and $50.00 toward the filing fee she paid.

I order the landlord to return the balance of the security deposit to the tenant in the net amount of $356.98 [$1,300.00 – $893.02 – $50.00]. In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of $356.98 to serve and enforce upon the landlord if necessary.

Conclusion

The landlord is authorized to deduct a total of $943.02 from the tenant's security deposit and is ordered to return the balance of $356.98 to the tenant without delay. I have provided a Monetary Order to the tenant with this decision to serve and enforce upon the landlord if necessary.

The tenant's claim for compensation under section 51 of the Act was severed from the tenant's application and dismissed with 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 30, 2019

Residential Tenancy Branch