Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $450.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the security deposit of $2,550.00, and to recover the $100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, but no one appeared on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to answer my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said she served her Application and Notice of Hearing on the Landlord via registered mail on June 28, 2019, and served her documentary evidence on the Landlord via registered mail on September 18, 2019. The Tenant provided Canada Post tracking numbers for these packages. Pursuant to section 90 of the Act, I find that the packages were deemed served on the Landlord on July 3, 2019 and September 23, 2019, respectively.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and confirmed her

understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Tenant stated that the periodic tenancy was to begin on June 1, 2019, with a monthly rent of $2,550.00, due on the first day of each month. The Tenant said that she paid the Landlord a security deposit of $1,275.00, and a pet damage deposit of $1,275.00. The Tenant said that she also paid the Landlord $450.00 to hold the rental unit for her. The Tenant said she applied for dispute resolution to get these funds back from the Landlord.

The Tenant submitted a copy of the tenancy agreement with her evidence uploaded to the RTB; however, it was in a format I was unable to open. The Tenant advised that the Parties had executed the tenancy agreement, and that the Tenant was ready to move into the rental unit, had it been clean enough for her. The Tenant said she vacated the rental unit on June 8, 2019.

The Tenant said that she never moved into the rental unit, because she said: “it was not fit to move into.” The Tenant submitted photographs of the rental unit that show:

- dining room drapes lying on the floor;
- some dust on the top of the dishwasher;
- a dusty light fixture in the bathroom;
- miscellaneous debris in the living/dining room entry;
- a marked floor she said was the laundry room, where the agreed upon appliances were missing;
- miscellaneous items left on the kitchen counter;
- a used condom left in the master bathroom; and
- mirrors and other drapery items left behind in the master bedroom.

The Tenant said: “The Landlord didn’t meet me until three days later, and didn’t do a walk through, so that ends the tenancy.” The Tenant did not say that she asked the

Landlord to bring the rental unit up to a reasonable standard of cleanliness, which would have enabled her to move in.

The Tenant submitted a monetary order worksheet, claiming an additional $1,739.60, for the following items:

	Receipt/Estimate From	For	Amount
1	[Cable provider]	Cable charges for June 2019	$205.28
2	Canada Post	Registered mail - service on Landlord	$13.82
3	[Vehicle renter]	Truck rental to move elsewhere	$29.35
4	[Storage facility]	1st storage locker	$146.16
5	[Storage facility]	2nd storage locker	$97.44
6	[Moving company]	Move belongings from storage	$447.55
7	Rent		$800.00
		Total monetary order claim	$1,739.60

The Tenant said she served the monetary order worksheet on the Landlord; however, she did not claim this amount of compensation in her Application.

The Tenant submitted a copy of an email she sent the Landlord on June 11, 2019, in which she provided her forwarding address and her request to receive the security and pet damage deposits back in the amount of $2,550.00.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[emphasis added]

Pursuant to section 16, I find that the Tenant had rights and responsibilities set out in the Act, regulation and tenancy agreement.

Landlords' and tenants' rights and obligations for repairs are set out in section 32 of the Act, which states:

> **Landlord and tenant obligations to repair and maintain**
>
> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> **. . .**
>
> [emphasis added]

Policy Guideline #1 assists in interpreting sections 32 of the Act:

> An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Policy Guideline # 5 ("PG #5"), **Duty to Minimize Loss**, states that the party entitled to claim damages has a duty to minimize the loss. PG #5 states:

> Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant

should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be 'reasonable' in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service. If partial mitigation occurs, the arbitrator may apportion the claim to cover the period during which mitigation occurred. The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy; however, claims for loss of rent for subsequent months may be successful once efforts to find a new tenant are made.

[emphases added]

In the case before me, there is no evidence that the Tenant gave the Landlord an opportunity to fulfil his obligation to clean the rental unit. Based on the photographs submitted by the Tenant, I find that the "uncleanliness" of the rental unit primarily involved materials that had been left behind, some dust and debris in a few places, and a missing washer and dryer. I find on a balance of probabilities that these matters could have been remedied by the Landlord fairly easily, thereby limiting the Tenant's losses.

I find the Tenant failed to take any steps to minimize her loss pursuant to PG #5, such as advising the Landlord of the issues and allowing him an opportunity to resolve them. Further, I find that the Tenant's expectation of cleanliness is inconsistent with PG #1, noted above. The Tenant signed a tenancy agreement, and therefore, had the rights and obligations of all tenants under the Act, pursuant to section 16.

Further, the Tenant did not give the Landlord the required notice of the end of the tenancy, pursuant to section 45 of the Act:

> **Tenant's notice**
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> **45** (1) A tenant may end a periodic 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, and
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> (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.
>
> **. . .**
>
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find in the circumstances before me, that the tenancy ended when the Tenant abandoned the rental unit on June 7, 2019.

The Tenant also applied to recover the $450.00 she agreed to pay the Landlord to hold the rental unit for her. However, the evidence before me is that the Landlord did hold the rental unit for the Tenant, and therefore, it is not clear on what basis the Tenant seeks recovery of this fee.

The Tenant did not apply for compensation for the items in the monetary order worksheet above, which means the Landlord did not have notice of this claim, as he was entitled to receive. I find it would be administratively unfair to consider the Tenant's subsequent claim for these items. The Tenant only claimed for the return of the security and pet damage deposits in the amount of $2,550.00, as well as for recovery of the

$450.00 deposit to hold the rental unit for the Tenant, for a total claim of $3,000.00. Given this and that the Tenant did not minimize her loss pursuant to PG #5, I find that the items in the monetary order worksheet are not recoverable under the Act.

I find pursuant to section 38 of the Act that the Landlord is responsible to repay the Tenant's security and pet damage deposits in the amount of $2,550.00. Given the Tenant's success in her Application, I award her recovery of the $100.00 Application filing fee. Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$2,650.00**.

Conclusion

The Tenant is successful in her Application for return of the security and pet damage deposits in the amount of $2,550.00, and for recovery of the $100.00 Application filing fee. The Tenant provided insufficient evidence for the basis of her claim for recovery of a $450.00 fee to hold the rental unit for her, therefore, this claim is dismissed without leave to reapply. The Tenant did not apply for recovery of the items noted in her monetary order worksheet in the amount of $1,739.60; therefore, I find it would be administratively unfair to consider it in this Decision.

I grant the Tenant a Monetary Order of **$2,650.00** from the Landlord, pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenant, and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 11, 2019

Residential Tenancy Branch