Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD, MNDCT // MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,289.79 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant's for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $13,777 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

These applications were originally adjudicated at a hearing on November 5, 2019 but were ordered to be reheard at a new hearing following a review consideration decision made on December 18, 2019.

The tenant did not attend the hearing but was represented by her mother as agent ("**CA**"). The landlord was represented at the hearing by an agent ("**MI**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both agents confirmed that the parties had received the other's notice of dispute resolution proceeding form and supporting evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $1,289.79;
2) recover its filing fee from the tenant;
3) apply the security deposit against any monetary order made?

Is the tenant entitled to:

1) the return of her security deposit;
2) a monetary order for $13,777.43; and
3) recover her filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenant agreement starting February 6, 2018 and ending January 1, 2019. Monthly rent was $820. On February 1, 2019, the parties entered into a second fixed-term tenancy agreement starting February 1, 2019 and ending on January 31, 2020. Monthly rent was $881.50 and is payable on the first of each month. The tenant paid the landlord a security deposit of $440. The landlord still retains this deposit.

The parties agree that the tenant has not resided in the rental unit since the end of May 2019. The parties disagree as to the circumstances that gave rise to the end of the tenancy.

CA testified that, in mid-May 2019, the landlord sought to end the tenancy on account of the tenant smoking in the rental unit. MI agreed, and testified that he attempted to do this by way of a mutual agreement to end tenancy, rather than make an application to the Residential Tenancy Branch (the "**RTB**") to end the tenancy. At no point did the landlord serve a notice to end tenancy on the tenant.

CA testified that the tenant refused to sign a mutual agreement to end tenancy, and that the landlord then proceeded to change the locks on the rental unit's doors at the end of May 2019, denying the tenant access to the rental unit.

CA testified that, as a result, the tenant was homeless and was forced to live on the streets. CA testified that once the tenant was locked out of the rental unit, she lost contact with the tenant for a period of time (the length of which was not certain from CA's testimony).

CA also testified that the tenant has a "medical condition" and was significantly negatively affected by her time living on the streets. CA testified that she filed an "Application for Warrant" pursuant to the Mental Health Act on June 6, 2020 in an attempt to locate her. She submitted a copy of this application into evidence.

The tenant also submitted a statement from a friend of the tenant into evidence. The tenant's friend wrote:

> [The tenant] tried to open her apartment door, but the key did not work for one of the locks, she tried again and the key was broken inside the lock. There were two locks and two keys to be able to open the apartment door. I do not remember the exactly [sic] date, but I believe it was [the] last week of May 2019.
> […]
> I visited [the tenant] at [the hospital] on June 2019.

From this, I understand that the tenant was located and admitted to a hospital by the end of June 2019.

CA testified that a large number of the tenant's possessions were trapped in the rental unit after the landlord changed the lock, and that the tenant has not been able to recover them. The tenant provided no evidence as to what possessions were lost, or what their value was. The tenant claims $2,100 in compensation for these lost possessions.

CA testified that, at the time the tenancy was ending, she was unaware as to the circumstances that led to the end of the tenancy. She testified that, at the time, she understood that the tenant had agreed to move out of the rental unit willingly at the end of May 2019.

CA testified that she discussed the condition of the rental unit with MI, and agreed to paint the interior of the rental unit, on the understanding that it was damaged by the tenant during the course of the tenancy. CA testified that she purchased painting supplies, costing $439.43 (for which she provided a receipt dated June 1, 2019) and additional paint for $60 (for which she did not have a receipt).

CA testified that, when she agreed to paint the rental unit, she was unaware of the condition of the rental unit at the start of the tenancy. She argued that the rental unit's paint was not damaged by the tenant during the tenancy, and, accordingly, she should be refunded the cost of the painting supplies.

CA denied that she took part in a move-out inspection and that, as the tenancy was ended illegally, the landlord did not have any authority to enter the rental unit and conduct a move-out report. She argued that any move-out condition inspection report made was therefore invalid.

CA testified that the landlord charged the tenant an additional $200 in monthly rent per month for three months because the tenant's boyfriend had moved in. CA denied that the tenant's boyfriend moved in and, as such, the payment was not permitted. The tenant provided no documentary evidence that any such payments were made.

CA argued that the tenant is entitled to an amount equal to twelve time the monthly rent, pursuant to section 51(2), as the landlord improperly ended the tenancy.

The tenant's monetary claim for $13,777 represents the following:

12-times monthly rent	$10,578.00
Expenses for painting	$499.43
Personal belongings	$2,100.00
Additional rent charged for guest	$600.00
Total	**$13,777.43**

Landlord's Position

MI denied that the landlord changed the locks on the rental unit doors. He testified that the tenant vacated the rental unit at the end of May, and that she did so of her own volition. MI testified that the tenant smoked in the rental unit during the tenancy, that this was a breach of the tenancy agreement, but that the landlord did not issue a notice to

end tenancy for cause. Instead, he testified that the landlord requested that the tenant enter into a mutual agreement to end tenancy effective the June 30, 2019.

MI testified that the tenant did not sign the mutual agreement to end tenancy, but instead moved out of the rental unit at the end of May 2019.

MI testified that he arranged for a move-out inspection with CA (as agent for the tenant) on May 31, 2019, but that she did not attend the inspection (although she had previously agreed to). In support of this he submitted the following text messages sent to the tenant's phone (which was in the possession of CA for reasons unclear to me) on May 31, 2019:

> Landlord – 12:55 pm
>
> > Hello [tenant] since you are moving out today, we would like to organize move out inspection and collect the keys back. Your move out inspection can be scheduled for 1:30pm or 2 today. Pls let me know […] which your preferred schedule. Thanks.
>
> Tenant 12:55 pm
>
> > Please email her.
> > No phone
>
> Landlord – 12:58 pm
>
> > The office does the emails – I'm trying to work with [tenant] and you [CA] to figure it out- because the office will organize professional inspector to do the inspection and then it becomes expensive.
>
> Tenant – 1:00 pm
>
> > Ok
>
> Tenant – 1:01 pm
>
> > I can come around 5:30 today

The landlord indicated on the move-out condition inspection report that the tenant was not present. It indicated that CA attended the rental unit the following day and agreed to pay for the repairs to the rental unit. The move-out condition inspection report recorded significant damage to the rental unit, including holes in the walls, dirt on the wall, the smell of smoke throughout the rental unit, water damage to the bathroom floor, and

scratches on the living room floor. The landlord submitted several photos of the rental unit showing some of this damage into evidence.

MI testified that the landlord incurred costs of $408.29 in repairing the rental unit, representing the following:

Cost of labour painting the living room	$105.00
Cost of labour sanding and refinishing hardwood floor	$71.25
Materials for sanding and finishing hardwood floor	$116.04
Replacing main door keys and laundry room key	$36.00
Replacing mailbox key	$80.00
Total	**$408.29**

The landlord provided receipts for the materials purchased in corroboration of the amount claimed for the materials, but no receipts for the other amounts claimed.

The landlord submitted text messages exchanged between MI and CA on June 30, 2019 and July 1, 2019 wherein MI requests the return of the keys to the rental unit. CA writes on July 1, 2019, that the main door key was placed in a yellow envelope left in the electrical room. MI asked for the mailbox key, the laundry room door key, and the second copy of the main door key to be returned, to which CA replied, “I have said enough to you [MI] […] ask [the tenant]”.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.
>
> (the “**Four-Part Test**”)

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, each party must prove the facts satisfying each step in the Four-Part Test, for each of their claims for a monetary award, on a balance of probabilities.

1. Tenant's Claims

   a. Twelve Times Monthly Rent

CA argued that the tenant is entitled to an amount equal to twelve times the monthly rent ($10,584) due to manner in which, she alleged, the landlord ended the tenancy (that is, by changing the locks on the rental unit and denying the tenant access to the rental unit).

CA argued that the Act provides a basis for such an award at section 51(2), which states:

> **Tenant's compensation: section 49 notice**
>
> 51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
>
> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 49 relates to the issuance of notices to end tenancy for the landlord's use.

With the greatest of respect, CA is mistaken in her interpretation of section 51. It does not provide any basis for a monetary award against a landlord for ending a tenancy by changing the locks on the door of the rental unit. Section 51 is only applicable in instances where a landlord has issued a notice to end tenancy pursuant to section 49, and then has not taken steps to accomplish the stated reason for ending the tenancy.

In this case, the landlord did not issue a notice to end tenancy (pursuant to section 49, or at all). As such, section 51 does not apply.

I am unaware of any other section in the Act which would allow me to order that the landlord pay the tenant an amount equal to twelve months' rent for improperly ending a tenancy.

Accordingly, it is not necessary for me to determine the circumstances that led to the ending of the tenancy, as even if I accepted CA's versions of events entirely (which I make no finding on), I cannot grant the relief sought by the tenant.

I dismiss the tenant's claim for twelve times the monthly rent.

b. Compensation for Tenant's Possessions

CA alleged that the landlord discarded property of the tenant left in the rental unit worth approximately $2,100. CA provided no evidence as to what these possessions were, or what their actual value was. Indeed, there is no evidence before me, other than the disputed testimony of CA, that suggests the landlord acted as alleged by CA.

As such, I am not satisfied that the landlord breached the Act, or, if he did, what the value of discarded item were. As such, I dismiss this portion of the tenant's claim.

c. Return of Additional Rent

Sections 13(2)(iv) and 41 of the Act permit a landlord to increase the monthly rent for additional occupants if the tenancy agreement states the amount that rent will be increased for each additional occupant.

The tenancy agreement submitted into evidence prohibits other tenants to occupy the rental unit (clause 25), but does not include language by which the monthly rent can be raised as a result of an additional occupant moving in.

Accordingly, I find that the landlord breached the tenancy agreement by increasing the monthly rent by $200 to account for another occupant moving into the rental unit.

The tenant alleged that she was charged an additional $200 for three months. No documentary evidence was provided in support of this amount. In its response materials, the landlord concedes that the tenant paid an additional $200 for the month of April 2019, but nothing for the months of May or June 2019 (which it alleged are owed, although, I note, are not claimed in its application).

Based on this admission of the landlord, I am satisfied that the tenant paid an additional $200 for April 2019 rent, but I am not satisfied that she paid any additional amount for May 2019 or June 2019. For the reasons stated above, I find that the landlord was not entitled to charge the tenant any additional amount for an additional occupant.

Accordingly, I order that the landlord pay the tenant $200, representing the return of the overpayment of rent for April 2019.

d. Painting Supplies

Based on the evidence provided by the parties, I find that, at the start of the tenancy, the condition of the rental unit was as indicated on the move-in condition inspection report. The tenant signed this report, and it characterized the condition of the walls in the rental unit as “good”, “clean”, or “touched up”.

Based on the text messages exchanged between CA and MI on May 31, 2019, I find that CA agreed to attend a move-out condition inspection on May 31, 2019. I find that, contrary to what she told MI in her text messages she would do, CA did not attend the inspection on May 31, 2019. I find that, as recorded on the move-out condition inspection report, she attended the rental unit the following day, and agreed to pay for the repairs to the rental unit. I find that she was acting as agent for the tenant when she did this.

I accept that the condition of the rental unit was as is specified on the move-out report. I make this finding based on the photographs provided by the landlord, and on the fact that CA agreed to pay for the repairs to the rental unit on June 1, 2019.

I find that there were holes in the walls, that there was a smell of smoke in the rental unit, that the walls were dirty and damaged. I find that the walls were damaged beyond

that caused by ordinary wear and tear, and that they required repainting to bring them back to an acceptable standard.

I find that CA spent $499.43 on painting supplies and repainted a portion of the rental unit. I do not find that the landlord is obligated to reimburse the tenant this amount, as section 32(3) of the Act requires a tenant to repair any damage that they caused to the rental unit.

Accordingly, I dismiss this portion of the tenant's claim.

2. Landlord's Claim

    a. Cost of Repairs

As stated above, I find that the condition of the rental unit at the end of the tenancy was as specified on the move-out condition inspection report.

I find that CA repaired a significant portion of the damage to the rental unit but did not repair all of it. I accept that the landlord purchased additional supplies as claimed to be used to make the balance of repairs.

Although no receipts were provided in support of the landlord's claim for compensation for labour to complete the balance of the repairs, I find that the amounts claimed are reasonable, and they were more likely than not incurred (given that the supplies to make the repairs were purchased).

Based on the June 30 and July 1, 2019 text messages exchanged between MI and CA, I find that the tenant did not return all of the keys provided to her at the start of the tenancy. I accept the amount claimed by the landlord as reasonable.

Accordingly, I find that the landlord is entitled to recover the amount claimed for making repairs to the rental unit (including the cost to replace the keys), in the amount of $408.29.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in full satisfaction of this amount. The landlord must return the balance ($31.71) to the tenant.

    b. Loss of Rent

The landlord claims compensation for June 2019 rent. MI argued that the tenant did not give the landlord notice that she would be leaving the rental unit at the end of May 2019. MI argued that the landlord was unable to re-rent the rental unit in June 2019 and lost out on income that it otherwise would have been entitled to. The landlord wrote in its written submissions that it made attempts to rent the rental unit out in June 2019. However, the landlord provided no documentary evidence that this was the case.

As such, I find that there is insufficient evidence to show that the landlord acted reasonably to minimize its damage caused by any breach of the Act by the tenant (as required by step four of the Four-Part Test).

Accordingly, I decline to award the landlord any amount for the loss of rental income for the month of June 2019.

As both parties have been partially successful in their applications, I decline to order that either party pay the other's filing fee. The parties bear the costs of their filing fees themselves.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act, I order that the landlord pay the tenant $231.71, representing the following:

Return of extra rent charged for April 2019	$200.00
Return of the balance of security deposit	$31.71
Total	**$231.71**

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: March 4, 2020

Residential Tenancy Branch