Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

On October 17, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing and both Tenants attended the hearing as well. All parties provided a solemn affirmation.

The Landlord advised that he served each Tenant with the Notice of Hearing and evidence package by registered mail on October 18, 2019 and the tracking history indicated that one package was unclaimed (the registered mail tracking number of the unclaimed package is listed on the first page of this decision). Tenant S.T. advised that he received his package. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that even though the Tenants did not accept both packages, the Tenants were served the Notice of Hearing and evidence package.

The Tenants advised that they did not receive the letter included in the Landlord's evidence that he made reference to during the hearing. The Landlord advised that the letter "should" have been included as it was in both packages. When receiving testimony from the parties, based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord's letter was more likely than not in the Notice of Hearing package. As such, I have accepted this evidence and will consider it when rendering this decision.

The Tenants advised that they served their evidence by posting it to the Landlord's door on March 17, 2020 and they texted the Landlord about this after doing so. The Landlord stated that he was not aware of this and that he did not receive this evidence. When receiving testimony from the parties, based on the evidence before me, I am satisfied on a balance of probabilities that the Tenants' evidence was more likely than not posted

on the Landlord's door. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on October 2, 2019. Rent was established at $1,550.00 per month, due on the first day of each month. A security deposit of $775.00 and a pet damage deposit of $775.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted with the Tenants on November 1, 2018.

All parties agreed that they met to conduct a move-out condition inspection report on October 2, 2019. However, the Landlord advised that the Tenants did not want to sign this report. Tenant S.T. advised that they conducted the move-out inspection verbally only as the Landlord did not have a copy of the report with him. They simply talked about the damage and they agreed on $200.00 to cover the damage. If the Landlord had presented the report, there was no reason not to sign it. S.H. confirmed that this move-out inspection was a casual inspection that was conducted verbally. The Landlord stated that he had the report with him and that they did agree to the damage.

All parties agreed that the Tenants provided their forwarding address via text message on October 12, 2019.

The Landlord advised that he is seeking compensation in the amount of **$71.52** for the cost of utilities owed from July to September 2019. He referenced the tenancy agreement and noted that the Tenants were responsible for 40% of the utility bill. He also cited the invoice submitted to support this cost.

S.H. acknowledged that they owed this amount and advised the Landlord to take $100.00 out of the security deposit to pay for this.

The Landlord advised that he is seeking compensation in the amount of **$200.00** for the cost of the repairing two doors that were damaged. He referenced pictures of these damaged doors that were submitted as documentary evidence and stated that this damage was not caused by the Tenants' pet.

The Tenants agreed to being responsible for the $200.00 worth of damage to the doors.

Finally, the Landlord advised that he is seeking compensation in the amount of **$1,550.00** for the cost of rent for October 2019. He stated that the Tenants occupied the rental unit until October 2, 2019 and they did not pay October 2019 rent on the first day of the month, when it was due. He advised that he advertised the rental unit for rent on October 13, 2019 and that he re-rented it for November 1, 2019. He stated that he tried to minimize any rental loss by trying to show the rental unit, but access was denied by the Tenants. He referenced the three notices for entry, that were submitted as documentary evidence, that he served to the Tenants, but he was not allowed to enter the rental unit on those dates. He stated that he had a breakdown in communication with S.T., but he tried to work with S.H.; however, he estimates that all showings except for two were cancelled by S.H. as she provided excuses not to let him enter as per those notices. When questioned why he would not simply enter the rental unit on the scheduled dates if he had provided the Tenants with the proper written notice, he stated that he did not want to given the tenuous relationship they had between them.
He stated that the Tenants did not pay rent for May 2019 and he had subsequently been awarded an Order of Possession that he served to the Tenants on May 14, 2019. He accepted rent from the Tenants for use and occupancy only and the Tenants eventually found a new place to move to at the beginning of September. He stated that the Tenants told him they would move by the end of September 2019; however, they overheld until October 2, 2019.

S.H. referenced copies of text messages with the Landlord stating that this was confirmation that they had an agreement to leave for October 1, 2019, and this was also supported by a verbal agreement. As well, she stated that their text messages showed that they advised the Landlord they were out of the rental unit on October 1, 2019 but he wanted to conduct the move-out inspection on October 2, 2019. She stated that the Landlord advised that he wanted to conduct renovations to the rental unit after they vacated. Regarding the notices to enter the rental unit, she stated that she only declined the Landlord's requests to enter when he texted her. She also acknowledged that she

advised the Landlord when it was not convenient for him to show the rental unit but stated other times when it was convenient.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 23 and 35 of the *Act* outline the Landlord's requirements to conduct a move-in and move-out inspection report. Clearly the importance of having completed these reports would be paramount to a claim for damages at the end of the tenancy.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on October 12, 2019. As the tenancy ended on October 2, 2019, I find that October 12, 2019 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on October 17, 2019. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to a pet. As the Landlord did not advise of any damage that was due to a pet, the pet damage deposit should have been returned in full within 15 days of October 12, 2019. As the Landlord did not return the pet damage deposit in full within 15 days of October 12, 2019, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenants a Monetary Order amounting to double the original pet damage deposit, or **$1,550.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or

loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims of compensation in the amount of $71.52 for the cost of utilities owed and $200.00 for the cost of the repairing two doors that were damaged, as the Tenants acknowledged that they are responsible for these costs, I grant the Landlord a monetary award in the amount of **$271.52**.

With respect to the Landlord's claim of $1,550.00 for the cost of rental loss because the Tenants overheld in the rental unit, I find it important to note that there is nothing in writing that specifically outlines what date that the tenancy would end, and the parties disagreed with the actual end date of the tenancy. While the Landlord claims for rental loss of October 2019, his evidence shows that he only advertised the rental unit starting October 13, 2019 so it is not clear to me what loss he suffered. Had he advertised prior to October and could not rent out the property due to the Tenants' negligence, then it might be plausible that he would be entitled to rental loss of October 2019. However, his only evidence is that he advertised the rental unit for rent by mid-October 2019.

Although the Landlord did refer to written notices for entry to show the rental unit to prospective tenants prior to October 2019, I find it important to note that once he serves the proper written notice to enter the rental unit, it is his right to enter on the specified time and date, regardless of the Tenants' position. As the Landlord willingly did not enter the rental unit after serving the proper written notice to do so, I am satisfied that any inability to re-rent the rental unit was of his own negligence.

However, as rent was due on the first of each month, a tenancy would then run from the first of the month to the last day of that month and the Tenants would be required to give up vacant possession of the rental unit at 1:00 PM on September 30, 2019. As the undisputed evidence is that the Tenants gave up vacant possession of the rental unit on October 2, 2019, I am satisfied that the Landlord should be granted the equivalent of two days worth of rent due to the Tenants overholding. As such, I grant the Landlord a monetary award in the amount of **$100.00** calculated as follows: $1,550.00 / 31 X 2 = $100.00.

As the Landlord was partially successful in his Application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Utilities and door damage	$271.52
Rent for October 2019	$100.00
Recovery of filing fee	$100.00

Security deposit	-$775.00
Doubling of pet damage deposit	-$1,550.00
TOTAL MONETARY AWARD	**$1,853.48**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$1,853.48** in the above terms, and 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.

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: April 7, 2020

Residential Tenancy Branch