Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- $1,950.00 in outstanding rent;
- $1,950.00 for compensation for monetary loss or other money owed; and
- Recovery of the filing fee

The hearing was convened by telephone conference call and was attended by the Landlord, a support person for the Landlord, and the Tenants, all of whom provided affirmed testimony. The Tenant's acknowledged service of the Application and Notice of Hearing by registered mail and raised no concerns regarding this service.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Matter #1

On November 26, 2020, the Landlord filed an Amendment to an Application for Dispute resolution (the "Amendment"), seeking to increase their monetary claim; however, the Landlord acknowledged that the Amendment was not served on the Tenants.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that as soon as possible, copies of the Amendment and supporting evidence must be produced and served upon each respondent by the applicant in a

manner required by section 89 of the *Act* and in any event, must be received by the respondents not less than 14 days before the hearing.

The ability to know the case against you and submit evidence in your defence is fundamental to the dispute resolution process. As the Landlord did not comply with the Rules of Procedure and serve a copy of the Amendment on the respondents, I found that it would be administratively unfair and a breach of the principles of natural justice to accept the Amendment for consideration in the hearing as the respondents did not have an opportunity to see or respond to it. As a result, the hearing proceeded based only on the Landlord's original Application. I advised the Landlord that they remain at liberty to file an Application in relation to this monetary claim.

Matter #2

In reviewing the documentary evidence from the Tenants, I noted statements from them indicating that they are seeking the return of their security and pet damage deposits as well as $5,000 for loss of income and $2,500 for pain, suffering and health issues; however, there was no Application for Dispute Resolution before me for consideration from the Tenants. I inquired with the Tenants about whether they had filed an Application or Cross-Application and they stated that they were unaware of the requirement to do so.

I advised the Tenants that submitting documentary evidence and statements does not constitute filing an Application or a Cross-Application under the *Act* or the Rules of Procedure and that pursuant to rule 6.2 of the Rules of Procedure, the hearing is limited to matters claimed on the Application. As the only Application before me for consideration was from the Landlord, the hearing therefore proceeded based only on the Landlord's Application. The Tenants were advised that they remain at liberty to file an Application in relation to their claims.

Matter #3

Although the Landlord acknowledged receipt of all the documentary evidence before me from the Tenants on April 4, 2019, the Tenants acknowledged receipt of only the following pieces of documentary evidence from the Landlord by Registered mail the 3rd week of November 2019:

- A copy of the condition inspection report;
- A copy of the tenancy agreement, floor plan, and pet agreement;

- A copy of an email dated October 30, 2019, wherein the Tenants gave notice to end the tenancy;
- A copy of an email containing the Tenants' forwarding address;
- A document titled "CAUTION NOTICE TO TENANT LATE RENT PAYMENT";
- A document titled "ACKNOLEDGEMENT OF EARLY END OF TENANCY NOTICE";
- Confirmation that the Landlord paid the $100.00 filing fee, and
- Copies of their identification.

Although the Tenants denied receipt of the remaining documents, these remaining documents pertain only to the service of the Application, Notice of Hearing, and aforementioned documents on the Tenants by registered mail. As the Tenants acknowledged receipt of these documents by registered mail in the hearing, I find that the acceptance of these service documents for consideration in this matter does not prejudice the Tenants in any way, and as a result, I have accepted them for consideration.

Issue(s) to be Decided

Is the Landlord entitled to $1,950.00 in outstanding rent and to withhold all or a part of the Tenants' security and pet damage deposits for this purpose?

Is the Landlord entitled to $1,950.00 for compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The 12 month fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on August 9, 2019, and has an end date of July 30, 2019. It states that rent in the amount of $1,950.00 is due on the first day of each month, that a security deposit was paid in the amount of $975.00 and that a pet deposit in the amount of $100.00 was paid. It also contains a $1,950.00 liquidated damages clause. In the hearing the parties agreed that these were the correct terms of the tenancy agreement.

The parties agreed that on October 30, 2019, the Tenants gave written notice by email to the Landlord to end their tenancy effective November 1, 2019, and that a move-out

condition inspection and report were completed together on November 1, 2019. The parties disagreed about whether a move-in condition inspection or report were completed in accordance with the *Act* and regulations.

The Landlord argued that the Tenants were not entitled under the *Act* to end their fixed term tenancy early and that even if they were, they gave only 2 days notice. As a result, the Landlord stated that they owe $1,950.00 in outstanding rent for November 2019. Further to this, the Landlord stated that they owe $1,950.00 under the liquidated damages clause in the tenancy agreement. In support of this testimony the Landlord submitted several documents, including but not limited to a copy of the tenancy agreement, an email dated October 30, 2019, from the Tenants, a document titled acknowledgement of early end of tenancy notice and a copy of the condition inspection report for the property.

The Tenants stated that the Application was unclear and that until the Landlord presented their evidence in the hearing, they were unaware that the Landlord was seeking $1,950.00 for liquidated damages or what month the Landlord was claiming unpaid rent for.

The Tenants stated that they had been having continuous issues with the Landlord, the downstairs occupant, and the neighbour's aggressive dogs as well as the condition of the property since the start of the tenancy and that despite numerous requests for the Landlord to act, nothing had been done. The Tenants stated that they had an acrimonious relationship with the occupant below them, who is also a tenant of the Landlord, and that this occupant was aggressive towards them. They stated that despite numerous complaints, they never heard anything back from the Landlord and the Landlord took no action.

The Tenants stated that their furnace never worked to produce heat and that the only heat in the home was from the fireplace. They stated that it was so cold in the rental unit at one point that a cot was set up in the living room near the fireplace. The Tenants stated that the Landlord did not replace the broken furnace until November 1, 2019, the day the tenancy ended. Further to this, the Tenants stated that the Landlord continuously ignored their requests for repairs to many aspects of the rental unit.

The Tenants stated that the back fence was so dilapidated that the neighbour's aggressive dogs were constantly trying to come through the fence and that as a result, neither they nor their dog could use the back yard.

The Tenants also took issue with the Landlord's request for identification and a credit check at the start of the tenancy, stating that they had been clear they did not want to provide identification or submit to a credit check and that after agreeing to this and accepting the security deposit, the Landlord changed their mind and demanded copies of their ID and a credit check be completed before signing the tenancy agreement. The Tenants stated that this reengaging on their agreement goes to the Landlords character.

Finally, the Tenants stated that as a result of the stress caused by the occupant below them, the aggressive dogs next door, and the Landlord's failure to resolve issues in the rental unit or the tenancy, Tenant 3 developed a serious medical condition.

As a result of the above, the Tenants stated that they had no option but to end the tenancy and argued that due to these exceptional circumstances, they should not owe any rent for November 2019, and that in any event, the Landlord has not submitted any evidence that rent is owed for November 2019. In support of their testimony the Tenants submitted documentary evidence including but not limited to, audio recordings, written submissions, copies of conversations with the Landlord via e-mail and text message, photographs, and medical documentation.

The Landlord denied failing to act against the downstairs occupant stating that they issued a verbal warning, followed by a text warning, followed by a written warning, after which no further complaints from the Tenants were received. The Landlord stated that they had the furnace replaced but that this took time, and that they did not become aware of any fence issues until late in the tenancy, at which point nothing could be done as it was winter. The Landlord also stated that they have spent over $20,000.00 on repairs and improvements to the rental property over the last 12 months. In any event, the Landlord stated that their complaints against him do not constitute valid reasons under the *Act* for ending their fixed-term tenancy early and they are therefore still responsible to pay the rent for November 2019 and the amount stated in the tenancy agreement for liquidated damages.

Analysis

Section 59 (2) (b) of the *Act* states that an Application for Dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Further to this section 62 (4) of the *Act* states that all or a part of an Application for Dispute Resolution may be dismissed if the application or part does not disclose a dispute that may be determined under the *Act*.

I have reviewed the Notice of Dispute resolution Proceeding, which includes a copy of the claims made by the Landlord, and I agree with the Tenants that there is no mention of a liquidated damages clause. As a result, I find that the Landlord has failed to provide full particulars in the Application itself of their $1,950.00 claim for compensation for monetary loss or other money owed. As a result, I dismiss this portion of the Landlord's claim with leave to reapply.

The Tenants also argued that it was unclear in the Application what rent was owed as the Notice of Dispute resolution Proceeding states "PLEASE SEE PAPER APP". I note that the Landlord filed a physical paper application with Service BC on November 19, 2019, a copy of which was forwarded to the Residential Tenancy Branch (the "Branch") for review and processing. In the paper application the Landlord stated that the Tenants did not give 30 days notice and broke their fixed-term lease with 10 months remaining on the lease. As a result, I find it clear that the Landlord was seeking lost rent for the Tenant's failure to give proper notice and ending the fixed term tenancy early and I therefore dismiss the Tenant's argument that this portion of the Application was unclear.

All parties agreed in the hearing that there was a fixed-term tenancy in place with an end date of July 30, 2019, and that $1,950.00 was due for rent on the first day of each month. The parties also agreed that the Tenants ended this fixed-term tenancy on November 1, 2019, by providing written notice by email to the Landlord on October 30, 2019.

Section 45 (2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

Although section 45 (3) of the *Act* allows tenants to end a fixed-term tenancy early if the Landlord has breached a material term of the tenancy agreement, it requires tenants to give the landlord written notice of the breach and that the breach relates to a material term of the tenancy agreement, and to allow the landlord a reasonable period of time to remedy the issue. Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach must inform the

other party in writing that there is a problem, that they believe the problem is a breach of a material term of the tenancy agreement, that the problem must be fixed by a deadline included in the letter, that the deadline be reasonable, and that if the problem is not fixed by the deadline, the party will end the tenancy.

While the Tenants have provided substantial evidence of complaints and correspondence with the Landlord in relation to the tenancy, section 44 (1) of the *Act* states that tenancies may only end in the ways specified in the *Act*. There is no evidence before me that the Tenants were entitled to end the tenancy under any section of the *Act* other than section 45 (2), which states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

As a result, I find that July 30, 2020, was the earliest date upon which the Tenants could have ended their tenancy in accordance with the *Act* and their tenancy agreement and that they therefore breached both the *Act* and the terms of their tenancy agreement when they ended their fixed-term tenancy agreement 10 months early on November 1, 2020, upon only two days notice. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. As the Tenants gave Notice on October 30, 2019, to end the tenancy on November 1, 2019, I am satisfied that the Landlord had insufficient time to re-rent the unit to a new occupant for November 1, 2020, and therefore suffered a loss of rent in the amount of $1,950.00.

In any event, section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement. Even if I had not found above that the Landlord suffered a $1,950.00 loss in rent for November 2019 as a result of the Tenants' breach of the *Act* and the tenancy agreement, I find that the Tenants still would have owed rent for November 2019 in the amount of $1,950.00 as the tenancy did not end before rent

for November was due under their tenancy agreement. As a result, I grant the Landlord's claim for $1,950.00 in unpaid rent for November 2019.

As the Landlord was only partially successful in their claim, I award them only $50.00 for recovery of 50% of the $100.00 filing fee.

In the hearing the parties agreed that the tenancy ended on November 1, 2019, and that the Tenants' forwarding address was provided to the Landlord in writing on November 4, 2019. As the Landlord's Application seeking retention of the Tenants' security and pet damage deposits for unpaid rent was filed on November 19, 2019, I find that the Landlord complied with section 38 (1) of the *Act*. Although the parties disagreed about whether a move-in condition inspection and report were completed at the start of the tenancy in compliance with the *Act* and regulations, I find that section 24 (2) of the *Act* relating to the extinguishment of the Landlord's right to claim against the security deposit does not apply to this claim as the Landlord's Application seeking retention of the Tenants' security and pet damage deposits relates to unpaid rent, and not damage to the residential property. Pursuant to section 72 of the *Act,* I therefore authorize the Landlord to retain the $1,075.00 in deposits held towards the $1,950.00 owed for November 2019 rent. Pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of $925.00; $1,950.00 for outstanding rent, plus $50.00 for the filing fee, less the $1,075.00 in deposits held by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $925.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 Landlord's claim for $1,950.00 for compensation for monetary loss or other money owed is 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: April 15, 2020

Residential Tenancy Branch