Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL MNDCL-S MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") 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 unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,700 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by his son ("**TH**") who made submissions on his behalf.

Preliminary Issue – Service of Documents

TH testified that he served the tenant with the notice of dispute resolution form and supporting evidence package by registered mail on December 3, 2019. The tenant confirmed receiving this package but stated that it only contained five photographs of damage to the rental unit and the notice of dispute resolution proceeding form. TH testified that he sent roughly 30 photographs documenting the damage. Both parties were equally credible when giving their evidence. Clearly one is mistaken, but I cannot say whom is mistaken on the evidence before me.

Rule of procedure 6.6 places the onus of proving a fact on the party alleging it. As TH alleged he delivered 30 photographs by registered mail to the tenant, he bears the onus to prove this to be true. I find that he has failed to discharge this onus. Accordingly, I exclude all by five of the photographs from evidence.

The tenant provided no documentary evidence to landlord in response to the application. She testified that she was not aware that she was required to do so, and

that she thought she only needed to upload her documentary evidence to the RTB website. This is incorrect. Rule of Procedure 3.15 requires a respondent to serve their documentary evidence on the applicant at least seven days in advance of the hearing. Accordingly, I do not permit any of the documents provided to the RTB to be entered into evidence.

In any event, the tenant only provided two documents to the RTB. A single photograph a room in the rental unit, and (strangely) a recipe for hamburger patties. The tenant testified she had trouble using the RTB evidence uploading portal and must have mistakenly uploaded the recipe.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $2,700; and
2) recover his filing fee;

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 tenancy agreement starting August 1, 2016. It was initially a six month, fixed-term tenancy, but since became a month to month tenancy. Monthly rent was $900 and is payable on the first of each month. The tenant paid the landlord a security deposit of $450, which the landlord continues to hold in trust for the tenant.

TH testified that, on November 2, 2019, the tenant advised the landlord that she would be terminating the tenancy as of November 15, 2019. He testified that she had not paid November rent at this time and has not paid it since. He testified that the tenant moved out of the rental unit on November 15, 2019.

The tenant agreed that she moved out on November 15, 2019, and that she advised the landlord of this on November 2, 2019. However, she testified that, on October 1, 2019, the landlord's wife told her that she would have to move out of the rental unit by November 15, 2019 so that members of her family could move in.

The tenant testified that on October 5, 2019, the landlord's wife gave her a copy of a mutual agreement to end tenancy by November 15, 2019, but that she refused to sign it, as she was unsure if she would be able to locate a new residence by that date. The tenant testified that she did locate a new residence, advised the landlord of this on November 2, 2010 and moved there on November 15, 2019.

The tenant also testified that the landlord had posted the rental unit for rent on craigslist on November 1, 2019 and were seeking monthly rent of $1,200.

As stated above, the tenant did not provide corroborating documentary evidence supporting this testimony.

The tenant did not deny that she failed to pay November 2019 rent.

TH denied the tenant's version of events. He denied that the landlord or his wife had told the tenant that she had to vacate the rental unit.

TH testified that the rental unit was significantly damaged at the end of the tenancy. He testified that:

1) the carpets were filthy and needed to be steam cleaned;
2) the refrigerator door handles were "ripped off";
3) a dresser belonging to the landlord was broken;
4) the bedroom closet door was damaged;
5) the walls were scratched throughout the rental unit and needed repainting; and
6) the casing on one baseboard heater had fallen off.

TH testified that the landlord conducted a move out inspection of the rental unit with the tenant but did not provide her with a copy of a move-out condition inspection report. No copy of a move-in or move-out condition inspection report was entered into evidence.

TH estimated the cost of repairing the damages at $900 but provided no documentary evidence to support this amount. In the hearing he provided estimates ranges for each of the damaged items but provided no basis for these amounts.

The tenant denied causing any damage to the rental unit or the landlord's property other than the damage to the refrigerator door handle. She estimated the replacement cost of the door handle at $25. She testified that she offered to replace the handle during the inspection, but the landlord told her not to.

The tenant also testified that the dresser left in the rental unit at the end of the tenancy was given to her by the landlords at the start of the tenancy. She admitted it was damaged by her son during the tenancy, but said that since it was hers, and not the landlord's, the landlord is not entitled to any compensation for the damage. When asked if the landlord was entitled to compensation for the cost of removing her property from the rental unit that she had left there at the end of the tenancy, the tenant conceded that the landlord likely was entitled to compensation for this.

TH also argued that the landlord was entitled to recover monthly rent for December 2019. He argued that the landlord was entitled to 30 days-notice before the tenancy could be ended. He argued that, on November 2, 2019, the soonest the tenant could

have ended the tenancy would have been December 2, 2019. As monthly rent is due on December 1, 2019, the landlord is therefore entitled to December rent as well ($900).

TH gave no evidence as to whether the landlord has re-rent or attempted to re-rent the rental unit.

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, the landlord bears the onus to prove that the tenant's actions breached the Act, that he suffered actual, quantifiable damage as a result, and that he acted reasonably to minimize this loss.

I will address each of the landlord's three bases for damages in turn.

1. Damage to the Rental Unit

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
>
> **37** (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the fact that there no move in or move out condition inspection report were prepared and given to the tenant, I cannot say if the damage depicted in the landlord's photographs was caused by the tenant.

Additionally, as the landlord has not provided me with any quotes, estimates, or invoices showing the value or replacement cost of the damaged items. Accordingly, the landlord has failed the third step of the Four-Part test by failing to prove the value of the loss suffered.

However, as the tenant has admitted to damaging the kitchen door handle and admitted to leaving the damaged dresser in the rental unit for the landlord to dispose of, the landlord is entitled to compensation for this damage. The tenant must pay the landlord $25 for the replacement cost of the refrigerator handle and $25 for the cost of disposing of the dresser.

2. Failure to conduct a move-in or move-out condition inspection report

The tenant testified, and TH agreed, that the landlord completed neither a move-in nor move-out condition inspection report. She testified that the landlord conducted a walkthrough inspection with the tenant at the end of the tenancy.

The completion of condition inspection reports at the start and end of the tenancy are required by sections 23(4) and 35(3) of the Act, which state:

> **Condition inspection: start of tenancy or new pet**
>
> 23(4) The landlord must complete a condition inspection report in accordance with the regulations.
>
> **Condition inspection: end of tenancy**
>
> 35(3) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at sections 24(2) and 36(2) of the Act:

> **Consequences for tenant and landlord if report requirements not met**
>
> 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> **Consequences for tenant and landlord if report requirements not met**
>
> 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> [emphasis added]

I find that, in accordance with sections 24(2)(c) and 36(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at both the start and at the end of the tenancy.

Residential Tenancy Policy Guideline 17 states:

> C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit
>
> […]
>
> - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
>
> […]
>
> - whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the deposit is extinguished. Therefore, the tenant is entitled to receive double the amount of the deposit from the landlord.

Accordingly, I order that the landlord pay the tenant $900, representing double the amount of the deposit.

This does not mean that the landlord's claim for damages is dismissed, however. He may still be entitled to compensation for damage caused by the tenants.

3. November and December Rent

Per the tenancy agreement, I find that rent is due on the first on each month. Based on the undisputed testimony of TH, I find that the tenant did not pay any rent for the month of November 2019.

Additionally, I am not persuaded by the tenant's uncorroborated testimony that the landlord's wife terminated the tenancy effective November 15, 2019. In her testimony, the tenant referred to documents which would have corroborated her evidence (the mutual agreement to end tenancy purportedly given to her by the landlord's wife or the craigslist advertisement dated one day prior to the tenant advising the landlord she was leaving the rental unit, for example). As these documents were in her power to produce, and she failed to do so, I find her testimony (which was easily corroborated) to be unconvincing.

I find that the tenant was obligated to pay November 2019 rent in full, and that she failed to do so. Accordingly, I order that she pay the landlord this amount.

Additionally, I find that the tenant breached the Act by failing to give one month's notice to end the tenancy, as required by section 45(1) of the Act. TH is incorrect in saying the earliest the tenant's notice to end the tenancy could be effective by is December 2, 2019. In fact, the earliest the tenancy could be ended by a notice to end tenancy served on November 2, 2019, is December 31, 2019, as section 45(1) requires effective date be the date the day the next month's rent is due (i.e. December 31, 2019). I also note that section 53 of the Act automatically corrects the effective date of an invalid notice.

As a result of this breach, I find that the landlord suffered damage in the amount of $900 representing the loss of December 2019 rent.

However, the landlord provided no evidence of his attempt to minimize this loss (such as advertisements to re-rent the rental unit). Per the Four-Part Test, and per section 7(2) of the Act, the landlord has obligation to reasonably minimize the damage suffered as a result of the tenant's breach. As I have no evidence that he did this, I find that he is not entitled to compensation for December 2019 rent.

As the tenant has been mostly successful in opposing this application, I decline to order that she reimburse the landlord his filing fee.

Conclusion

Pursuant to sections 62 and 67 of the Act, I order that the tenant pay the landlord $50, representing the following:

November Rent	$900.00
x2 security deposit	-$900.00
Cost to remove dresser	$25.00
Cost to replace handle	$25.00
Total	**$50.00**

I note that the landlord's obligation to return the security deposit to the tenant is met by making the payment to the tenant of double the security deposit. This amount is then offset against the monetary order made in favour of the landlord for the unpaid November rent.

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 28, 2020

Residential Tenancy Branch