Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALI-FATIMA ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL, MNRL-S, MNDCT, MNSD, FFT**

Introduction

This hearing dealt with monetary cross applications. The landlords applied for monetary compensation for damage to the rental unit, unpaid and/or loss of rent, and authorization to retain the tenants' security deposit and pet damage deposit. The tenants applied for monetary compensation for damages or loss under the Act, regulations or tenancy agreement, and, return of double the security deposit and pet damage deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that the parties had exchanged their respective proceeding packages and evidence. The parties' materials were admitted into evidence and considered in making this decision.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions about the process.

Preliminary and procedural matters

At the outset of the hearing, the landlord's agent indicated he had not submitted his copy of the most recent tenancy agreement. The landlord's agent also stated that he had not reviewed the tenant's Application for Dispute Resolution and evidence until recently even though the tenants sent it to the landlords on May 8, 2020. Given these statements by the landlord's agent, I asked the landlord's agent whether he was seeking an adjournment or whether he was prepared to proceed. The landlord's agent confirmed he was not seeking an adjournment and he was prepared to proceed if the

parties were not in dispute as to the terms of the tenancy and amount of the deposits. The parties were not in dispute as to the relevant terms of tenancy or the sum of deposits paid. Accordingly, an adjournment was not sought by the landlord.

During the allotted hearing time, I fully heard the landlord's claims against the tenants. However, the time to hear the tenant's claims was much less. In hearing from the tenants, I provided them with my preliminary findings which was to dismiss their claims; however, I gave the tenants the opportunity to adjourn the proceeding if they sought more time to present their claims more fully or make further arguments. The tenants stated they did not seek to adjourn the hearing and indicated they were satisfied if I were to make my final decision based on what they had presented thus far.

Issue(s) to be Decided

1. Are the landlords entitled to recover unpaid and/or loss of rent from the tenants for the month of January 2020?
2. Did the landlords establish an entitlement to recover damage and cleaning costs from the tenants?
3. Did the tenants establish an entitlement to compensation from the landlords for damages or loss under the Act, regulations or tenancy agreement?
4. Are the tenants entitled to doubling of the security deposit and/or pet damage deposit?
5. Disposition of the tenants' security deposit and/or pet damage deposit.
6. Award of the filing fees.

Background and Evidence

Co-tenants NK and SD were occupying the rental unit under a previous tenancy agreement before entering into a new co-tenancy agreement along with AB starting on March 1, 2019. The landlords collected a security deposit and pet damage deposit totalling $1900.00 from the tenants. The tenants were required to pay rent of $1900.00 on the first day of every month. The tenancy was on a month to month basis.

Landlord's application

1. Unpaid rent for January 2020 -- $1900.00

The landlord submits that it suffered loss of rent for the month of January 2020 due to the insufficient notice to end tenancy given by the tenants. The landlord's agent

testified that he received an email on November 17, 2019 whereby co-tenant SD states he and co-tenant AB will be moving out by January 1, 2020 but that co-tenant NK might want to stay. The landlord responded by informing the tenants that ending the tenancy would require all of the co-tenants to move out or NK would have to enter into a new tenancy agreement to end the existing tenancy. The landlord instructed the tenants to let him know what they decided by the end of the month.

NK and the landlord had a discussion concerning the NK's continued occupancy if new roommates were secured. Both NK and the landlord's agent tried to find new roommates to live with NK but new roommates were not secured. The landlord's agent attributed this to NK who did not show up to show the unit to prospective roommates. NK attributed this to a prospective roommate feeling uncomfortable about the landlord's agent. On December 5, 2019 NK emailed the landlord to inform him that he will be moving out by December 31, 2019 pursuant to the notice given by SD on November 17, 2019.

The tenants are of the position they gave sufficient notice to end the tenancy on November 17, 2019.

The tenants returned possession of the rental unit to the landlord and participated in a move-out inspection on January 1, 2020.

The landlord's agent testified that the landlord entered into a new tenancy agreement with replacement tenants near the end of January 2020 for a tenancy set to commence February 1, 2020.

2. Damage and cleaning -- $2355.00

The landlords are claiming various amounts to rectify alleged damage to the rental unit and cleaning of the rental unit. The landlord provided a copy of the move-in and move-out inspection report in support of the landlord's position; however, the tenants completed the move-out inspection report indicating they did not agree with the landlord's assessment of the condition of the property.

The landlord did not provide photographs of the damaged areas or areas that required cleaning or any receipts, invoices or estimates to support the claim for damage and cleaning.

The landlord's agent stated he did the repairs himself and he estimated the amounts claimed based on his experience; however, the landlord did not describe the amount of time he spent on various tasks, the hourly rate charged, receipts for materials, or provide photographs to demonstrate the amounts were reasonable.

In the absence of other corroborating evidence, I found the disputed move-out inspection report insufficient to establish the landlord's entitlement to recover the amounts claimed for damage and cleaning and I dismissed the landlord's claim without hearing from the tenants.

Tenant's application

1. Double security deposit and/or pet damage deposit

The tenants seek return of double the security deposit and pet damage deposit on the basis the landlord overcharged them $100.00 for the pet damage deposit. In making their written submission, the tenants indicated that they had paid $950.00 for a security deposit and $1000.00 for a pet damage deposit; however, during the hearing, the tenants testified and the landlord conceded that the total sum of deposits paid and collected was $1900.00.

The tenancy agreement that started on March 1, 2019 was not before me; however, even if the landlord overcharged for the pet damage deposit, the Act provides a remedy for an overpaid deposit. The remedy is to deduct the overpayment from rent otherwise payable or recovery of the overpayment by way of a Monetary Order. However, an overpayment of a deposit does not automatically entitle a tenant to doubling of the deposits.

I informed the parties that I would consider doubling of the deposits totalling $1900.00 if there was a basis for doing so under section 38 of the Act. I explained the requirements of a landlord under section 38 of the Act to the tenants. The tenants did not make any further submissions regarding doubling of the deposits.

From the tenant's written submission it appeared as though the tenants were of the view they were entitled to doubling because the landlord made its claims against their deposits on January 17, 2020; however, I noted January 17, 2020 is the date appearing on the Notice of Dispute Resolution Proceeding but that the Landlord's Application for Dispute Resolution was actually filed on January 13, 2020 which is within 15 days of the end of tenancy.

2. Damage or loss under the Act, regulations or tenancy agreement

The tenants seek compensation of $500.00 for the threat to their health and $120.00 to recover the cost of a veterinary visit.

The tenants testified that there was mould in the rental unit, in particular on the widow blinds. The tenants testified that they notified the landlord of the issue on November 16, 2018 (under the previous tenancy agreement) and again on May 26, 2019. The landlord's response was that condensation on the windows may form with temperature changes and to keep the heat on. The landlord also instructed the tenants to wash the blinds and he sent them a link to follow on the internet. The tenants testified that they washed the blinds but the mould returned.

After receiving the link from the landlord, the tenants acknowledged that they did not follow up with the landlord to inform him the information was ineffective. Nor, did the tenants file an Application for Dispute Resolution seeking repair orders.

The veterinary bill indicates the tenant's cat was prescribed medication but there is no diagnosis indicating mould in the home was causing health issues for the cat.

A doctor's referral for testing AB for a chronic cough and suspected asthma was provided as evidence; however, the findings of the testing was not provided.

The landlord confirmed the rental unit has single pane windows and condensation is common in the winter.

3. Lost wages to respond to landlord's claim

The tenant seeks compensation for wages lost in responding to the landlord's claim. Costs to respond to a claim or make a claim are not recoverable under the Act, with the exception of the filing fee. Accordingly, I dismissed this claim summarily.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the applications.

Landlord's application

1. Unpaid and/or loss of rent

The landlords are seeking unpaid and/or loss of rent for the month of January 2020 on the basis the tenants failed to give sufficient notice to end the tenancy and the landlords were not able to re-rent the unit until February 1, 2020, resulting in a loss for the month of January 2020 in the amount of $1900.00.

The tenants are of the position they gave sufficient notice pursuant to an email they sent to the landlord on November 17, 2019.

A tenant may end a month to month tenancy in accordance with section 45(1) of the Act. Section 45(1) requires the tenants to give written notice to the landlord with an effective date that is at least one full month after notice is given and the day before rent is due.

The tenants gave notice to end the tenancy to the landlord via email. The landlord did not appear to take issue with the fact the notice was delivered via email even though email was not an acceptable method of serving notice at that time . However, since the landlord did not take issue with receiving the notice via email, I proceed to determine

whether the tenants gave the landlord at least one full month of notice to end the tenancy.

Since the tenants were required to pay rent on the first of the month, to end the tenancy as of December 31, 2019 and bring an end to the tenant's obligation to pay rent on January 1, 2020, the tenants would have to provide the landlord with written notice no later than November 30, 2019.

Co-tenant SD did send an email to the landlord on November 17, 2019 stating:

> Co-tenants SD and AB are giving a "month's written notice that we are going to vacate the property [property address] which we are currently renting from you. Please accept this written notice in accordance with the tenancy agreement as our intention to vacate the property on or before January 1st, 2020.

However, SD goes on to state in the same email:

> "As of right now, [NK] is unsure if he will be staying. I do not want to put any words in his mouth but you can contact him to find out what he is planning on doing."

It is not upon the landlod to follow up with NK as to whether he is staying or leaving. The obligation to give clear notice to end tenancy is that of the tenants. Where there is a co-tenancy, one co-tenant may give notice to end tenancy for all of the co-tenants. However, I find the email of November 17, 2019 is less than clear as SD indicates that SD and AB are wanting to end the tenancy and vacate the rental unit by January 1, 2020 but that may not be the case for NK.

Given the lack of clarity of SD's email, I find it appropriate that the landlord's agent responded as he did in a series of email exchanges the same day. The landlrod's agent responds by informing the tenants that there are three co-tenants on the tenancy agreement and the tenancy will not end if two tenants move out and one stays. Alternatively, the landlrod informs SD that NK could find roommates and if a new tenancy agreement is entered into with NK and new roommates then the existing tenancy agreement would end. The landlrod instructs the tenants to inform him of their decision by the end of the month, which I interpret to mean the end of November 2019 since the emails are written November 17, 2019. I find the lanldord's request for confirmation by the end of November 2019 reasonable and in keeping with the tneant's obligation to give clear notice to end tenancy by November 30, 2019 if they seek to end

the tenancy as of December 31, 2019. Without this certainty, the lanldrod is not in a position to advertise and seek replacement tenants.

NK proceeded to try to find new roommates but he was unsuccessful; however, he does not inform the lanldrod of his decision to end the tenancy effective December 31, 2019 until December 5, 2019 which is less than a month's advance notice. If the tenants' notice of November 17, 2019 was sufficiently clear, then the tenant's notice of Decembe 5, 2019 would not have been required which is further support that the November 17, 2019 was not sufficiently clear so that the landlord could take action to start efforts to re-rent the unit. Rather, until receiving the tenant's notice of December 5, 2019 the landlod cannot take action to try to re-rent the unit because the tenants had not confirmed that all three tenants would be moving out.

In light of the above, I find the tenants did not give the lanldord sufficiently clear notice to end the tenancy effective December 31, 2019 at least one full month in advance and this is a breach of the Act.

The tenants finally gave the landlord sufficiently clear notice of their intention to end the tenancy on December 5, 2019. The notice of December 5, 2019 has an effective date of December 31, 2019; however, this is less than one full month of notice. Where a notice to end teancy does not contain an effective date or the effective date does not comply with the notice requirements, section 52 of the Act provides that the effective date automatically changes to comply. In giving clear notice to end the tenancy on Decmeber 5, 2019, I find the effective date of the tenant's notice automatically changed to January 31, 2020 pursuant to section 52 of the Act.

I was provided unopposed evidence that the landlords suffered a loss of rent for January 2020, therefore, I grant the landlord's request to recover loss of rent in the amount of $1900.00 from the tenants.

2. Damage and cleaning costs

As described in the Backround and Evidence sectin of this decision, I find the landlrod did not provide sufficient evidence to meet its burden of proof and these claims are dismissed without leave to reapply.

3. Filing fee

The landlords' claim had some merit and I award the landlrods recovery of the $100.00 filng fee.

4. Security deposit and pet damage deposit

The landlords requested authorization to retain the tenants' depsits toalling $1900.00. I authorize the landlrod to retain the deposits in satisfaction of the rent awarded to the landlords with this decision.

Tenant's application

1. Double security deposit and pet damage deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenants turned over possession of the rental unit on January 1, 2020. The tenants made a submission that they gave the landlord a partial forwarding address on that date and the complete address on January 13, 2020. The landlords filed their claims on January 14, 2020. As such, I am satisfied the landlords complied with section 38(1) of the Act by making a claim against the deposits within 15 days of the tenancy ending or receiving the tenants' forwarding address and the tenants are not entitled to doubling of the deposits.

The tenants' security deposit and pet damage deposit, in the single amounts, have awarded to the landlord as an offset to the landlords' claim for unpaid and/or loss of rent.

2. Damages or loss

The tenants' primary complaint concerned mould on the window blinds. It was undisputed that the tenants notified the lanldrod of this issue and the landlord responded by instructing the tenants to keep the heat up during cold weather and wash

the blinds. If the tenants were of the view the landlrod's response was inadequate, I would expect they would notify the landlrod again that his suggestions were not working and if the landlord did not take sufficient further action I would expect the tenants would make an Application for Dispute Resolution seeking repair orders so as to mitigate their losses. Rather, the tenants chose to let the issue go and I find that in making that decision the tenants did not mitigate their losses, if any. Therefore, I find the tenants did not meet the fourth part of the test for damages outlined above and I dismiss their claim for compensation.

3. Filing fee

The tenants application was unsuccessful and I make no award to the tenants for recovery of the filing fee.

Monetary Order

In keeping with all of my findings and awards outlined above, I provide the landlords with a Monetary Order to serve and enforce against the tenants, calculated as follows:

Unpaid and/or loss of rent – January 2020	$1900.00
Filing fee awarded to landlords	100.00
Les: security deposit and pet damage deposit	(1900.00)
Monetary Order for landlords	$ 100.00

Conclusion

The landlords are authorized to retain the tenants' security deposit and pet damage deposit in satisfaction of unpaid and/or loss of rent and the landlords are provided a Monetary Order for the balance of $100.00 to serve and enforce upon the tenants.

The tenants' application is dismissed in its entirety.

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: June 10, 2020

Residential Tenancy Branch