Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC, MNDCL, FFL
For the tenant: CNC, MNDCT, LRE, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the "landlord Application") on February 12, 2020 seeking an order of possession of the rental unit, as well as compensation for monetary loss or other money owed. Additionally, they applied for reimbursement of the application filing fee.

The landlord served the notice of this dispute to the tenant via registered mail on February 13, 2020. They sent subsequent amendments with corresponding evidence to the tenant via email. The tenant confirmed receipt of these submissions in the hearing.

The tenant applied for dispute resolution (the "tenant Application") on February 18, 2020. This is for an order to cancel the One Month Notice to End Tenancy for Cause (the "One Month Notice") issued by the landlord. Additionally, the tenant seeks an order that suspends or sets conditions on the landlord's right to enter the rental unit. The tenant also seeks a monetary order for damage or compensation, and the application filing fee.

The tenant stated that they delivered notice of this dispute hearing to the landlord in person after applying online. The tenant provided a statement from an individual who accompanied the tenant to observe that transaction on February 28.

The matter proceeded by way of a hearing pursuant to section 74(2) of the Residential Tenancy Act (the "*Act*") on April 17, 2020. Both parties attended the conference call hearing, and I verified that the party named as the landlord on their own application was the same party as that listed by the tenant on their application. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

The matter reconvened on June 19, 2020 after an adjournment – this was due to the volume of submissions and complexity of the matter involved. In the interim decision dated May 19, 2020, I advised each party that the matter would continue in the reconvened hearing.

Preliminary Matter

In the hearing the tenant provided that the tenancy ended, and they vacated the rental unit on March 31, 2020. This was after the issued One Month Notice specified a vacancy date of March 10. The tenant stated that they were "maintaining residence" until March 31, 2020 and had the intent that they wished to cancel the application they made on February 18, 2020. The tenant provided a transcript of the request they made to withdraw their application on March 30, and the response from this branch on April 1, 2020.

The landlord confirmed that the tenancy ended in March with the tenant vacating the unit toward the end of the month.

In the hearing I informed both parties that the end of tenancy was not at issue. The tenancy ended after both parties filed their applications for dispute resolution. Therefore, I dismiss the landlord's application for an order of possession. I dismiss the tenant's request for a cancellation of the One Month Notice for the same reason.

Given that the tenancy ended prior to the hearing, I also dismiss the tenant's application for an order to set a suspension or restrictions on the landlord's right to enter the rental unit.

The landlord presented that the tenant was in breach of the tenancy agreement by subletting the unit to two sub-tenants. The landlord provided the written account of one of the sub-tenants who made a claim for costs associated with the tenant ending the subletting agreement and subsequently trying to arrange for another living arrangement for that sub-tenant. This is dated March 26, 2020. The sub-tenant claims reimbursement for 3 months' rent ($2,250.00), a damage deposit that is "unreasonably withheld as rent" ($750.00), and reimbursement for daily earning due to mental and emotional distress ($1,600.00). The landlord proposed having the sub-tenant dial in to present this account orally in the hearing. This was not carried out in the initial hearing due to the timing involved and because the sub-tenant's detailed account appears in the landlord's submitted evidence. The total claim from the sub-tenant – whom the landlord states was "the victim of [the tenant's] fraud too" – totals $4,600.00. In the reconvened hearing, the landlord clarified that this claimed amount from the tenant does not factor into their request for monetary compensation. Therefore, I give no consideration to this monetary claim from the sub-tenant. Where necessary, I consider the sub-tenant's statement as it relates to the overall issue of landlord compensation.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation pursuant to section 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for the landlord Application pursuant to section 72 of the Act?
- Is the tenant entitled to monetary compensation pursuant to section 67 of the *Act*?
- Is the tenant entitled to recover the filing fee for the tenant Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the tenancy agreement. This shows the parties signed the agreement on September 1, 2019. The rent was $2,600.00 payable on the first day of each month. The tenant paid a security deposit amount of $1,300.00 at the start of the agreement.

This was a new agreement the parties entered after the landlord-tenant relationship started in 2018. This renewed 2019 agreement was to add a “single roommate” to the agreement. The landlord at this time specified “only one person or a small family with one kid will be allowed”. Later the landlord alleged that the tenant made a fraudulent arrangement to add two tenants as adults, instead of one adult and one child.

Both parties presented their side on the issue of the landlord’s compliance with municipal bylaws which govern the number of tenants allowed in a rental unit. This presents a fundamental disagreement to both parties. The tenant presented that violation of a bylaw would mean significant fines levied to the landlord, for the issue of roommates occupying the unit in violation of the bylaw. By the tenant’s account, this amounts to $500.00 per day. The landlord presented that the tenant was in breach of the tenancy agreement by subletting the unit to two sub-tenants.

In the landlord’s Application, they provided that the amount requested for compensation is $12,807.92. They gave a description for this stating: “please review amendment for details of claim”. As it appears in the amended application for dispute resolution dated April 2, 2020:

	unpaid rent/	$2600 + $150
best buy	damaged fridge	$1524.59
cleaning cost		$ ~ 300
keep all deposits	fraud on agreement	$1300
compensation for illegal room sublet	fraud on agreement	$6933

The claim for unpaid rent -- $2,600.00 -- is related to the sub-tenant issue. By the time of the reconvened hearing in June, this sub-tenant was still occupying the unit due to health concerns. The landlord does not accept rent payment from that individual directly and they feel the tenant is the person who brought in sub-tenants and is therefore responsible for the rent payment for the month of April.

The $150.00 represents unpaid utilities for the month of April, at the time the landlord filed the amended application on April 2, 2020.

The landlord provided a receipt for a refrigerator purchased on September 27, 2017 for $1,524.59. Their testimony is that a subsequent scratch to the fridge that occurred during this tenancy left a “scratch [that is] so deep”. Photos accompany their application to show this. The sub-tenant who remains in the unit provided this evidence to the landlord after the tenant moved out in March 2020.

The cleaning cost for “$~300” is “just an estimate.” The sub-tenant still occupying the unit said they cleaned the unit for two days after the tenant moved out.

The landlord desires to keep the security deposit amount of $1,300.00. The tenant confirmed they did not receive a repayment of this when the tenancy ended. For this specific issue, the tenant presented they sent an email to the landlord dated March 27, 2020 and the message itself contained their forwarding address. In the hearing the landlord confirmed they had the tenant’s new address. A letter dated March 29, 2020 shows the tenant confirming the end-of-tenancy date of March 31, 2020. This letter contains the tenant’s new address.

The landlord presents the amount of $6,933 to represent the sum total of one-third of each month’s rent since subtenants moved into the units. They allege the tenant fraudulently indicated two roommates who moved in were parent and child; however, it was two adults who moved in, with the individual whose age was in question actually being 19 years of age. This amount represents the deficit of rent income from not having a third roommate in place, from September 2019 to April 2020. This is one-third of the monthly rent, at $866.67 multiplied for 8 months, including the month of April when the landlord filed their amended application.

On this point, the tenant presents that they paid the full amount of rent for each month they were in the unit, from September 2019 to the end of tenancy on March 31, 2020. In the hearing, the landlord confirmed that they received full payment for each month's rent

The landlord presented photos that depict damages to the unit. There are 18 photos submitted in total. The landlord submitted these photos on April 7, 2020. The landlord did not submit a list or description of the damage and did not submit evidence on any costs incurred for repair or replacement.

In the hearing the tenant reiterated that there was no move-in or move-out inspection in which they had the opportunity to review the state of the unit with the landlord. Additionally, they stated there was no condition inspection report completed neither at the start of the tenancy, nor at the end.

They also provided clarification, from their perspective, about which roommates moved in and out of the unit and under what circumstances. In the context of this wider set of circumstances, they stated that the landlord attempted to work around the issue of city bylaws regarding the tenant capacity of the individual unit. There was the risk of a substantial fine if local bylaw enforcement staff imposed a penalty. Any agreement the parties had on what was acceptable was not in a written agreement; rather, all arrangements made by each party along with verification was done by text messaging.

The tenant requests compensation for moving expenses and the cost of hiring movers. This is in relation to the tenant's end of vacancy in March. For this hearing the tenant did not submit evidence in the form of a statement of the costs incurred.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The issue of compliance with municipal bylaws is not an issue that is properly decided through consideration of the *Act*. This forms the basis for the reason of the landlord issuing a One Month Notice to the tenant. As above, I have dismissed both parties' claims regarding a proper ending to the tenancy and the landlord' issuance of a One Month Notice for that purpose.

I dismiss the portion of the landlord's claim for the month of April for one full month's rent amount for $2,600.00. The landlord provides this is rent owed by the tenant, who left the current occupants in the unit who cannot move because of immediate serious health concerns.

The Act section 47(2) provides that:

> (2) A notice under this section must end the tenancy effective on a date that is
> (a) not earlier than one month after the date the notice is received, and
> (b) 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.

Applying this to the One Month Notice, the date of March 10, 2020 is not permissible under the Act. I find section 53 of the Act applies, where "the effective date is deemed to be the day in the month. . .that rent is payable under the tenancy agreement." The deemed effective date, in this scenario, is therefore March 31, 2020.

I accept that the tenant stated their intention to move out on March 31, 2020. I also accept that they paid the full month of rent for March. The landlord made no subsequent agreement with the tenant or the occupant for the provision of rent onwards in April. I find the tenancy ended effective the tenant's move-out date on March 31, 2020; therefore, the tenant is not owing for monthly rent beyond that date.

The relevant portion of the Act regarding the return of the security deposit is section 38:

> (1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing;
> The landlord must do one of the following:
> (c) repay. . .any security deposit. . .to the tenant. . .;
> (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

Sections 23 sets out the requirements for the landlord and tenant together at the start of a tenancy; this includes the completion of a condition inspection report. Section 24 sets out the consequences if the report requirements are not met. Subsection (3) provides that the right of the landlord to claim against the deposit is extinguished where the landlord does not complete the report nor give a copy of it to the tenant. Sections 35 and 36 mirror this requirement for the end of tenancy.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The landlord did not submit receipts or bills showing unpaid utilities. There is no evidence to establish this amount; therefore, the landlord does not show that a damage or loss for this amount exists. I dismiss this portion – $150.00 – from the landlord's claim.

Similarly, there is no adequate estimate of time spent cleaning the rental unit after the tenant had departed. The landlord in the hearing stated the amount of $300.00 is an estimate; further, it is expressed as an approximation on the worksheet. Presented in this way, I am unable to establish the true value of cleaning work completed as based in fact. This portion of the landlord's claim is dismissed.

The landlord submitted the receipt for the original purchase of a refrigerator in 2017. This purchase was prior to the tenancy here; however, the landlord presents this to claim reimbursement for damage done to the fridge after its purchase during the tenancy. The photo shows a scratch on the refrigerator. For this portion of the claim, the tenant presents that there was no inspection at the start or end of tenancy. This being the case, I cannot attribute this damage to the tenant. In any event, the damage in question does not exist as proof of the need to replace the cost for the entire refrigerator for the damage done to the front of the door. I find this is not an effort at mitigating the damage by the landlord.

The landlord claims $6933.00 for the tenant's "fraud on the agreement." This amounts to one-third of the full rent amount over the span of eight months. I accept the tenant's evidence – confirmed by the landlord – that they paid the full amount of rent for all the months from September 2019 to March 2020. This amount is not an actual loss or expense to the landlord, and they did not show through evidence how they are entitled to compensation for what they alleged was an illegal act of the tenant. An allegation of fraud does not establish the right of the landlord to this monetary amount. I dismiss this part of the landlord's claim.

For the security deposit claim for $1,300.00, I review the relevant dates. The landlord issued the Notice to End Tenancy on February 10, 2020 for the end of tenancy on March 31, 2020. The landlord made the claims originally on their Application dated February 12, 2020. They amended their application on April 2 to include a monetary amount and this includes the claim against the security deposit. On April 8, they added more evidence.

Additionally, I find the landlord also did not make a valid claim against the security deposit. Primarily, there is no condition inspection report in place. Further, the reason for the claim on the Monetary Order Worksheet completed by the landlord is for "Fraud on agreement". I find this is not a reference to repairs undertaken or actual damages to the rental unit, nor is it a loss suffered by the landlord. They have not established the value of the damage. There are no receipts or estimates concerning repairs to damages to the unit. The photos submitted have no description or reference to actual costs or expenses. Therefore, I dismiss this portion of the landlord's claim. They must return the security deposit to the tenant because they did not properly make a claim against that deposit.

The landlord has not met the burden of proof to show a damage or loss that is deserving of compensation. For the reasons above, I dismiss the landlord's the claim for compensation of monetary loss or damages.

The tenant asks for compensation for moving costs when the vacated the unit. The tenant did not show that they were forced to move. I find the tenant incurred moving costs, as they would in any case, when leaving the rental unit. The means by which the tenant moved out were entirely at their own discretion, through the selection of options. This is not a cost under the circumstances for the landlord to bear. I dismiss the tenant's claim on moving expenses for this reason.

Because neither the landlord nor the tenant was successful in their applications, I find neither party is entitled to recover the filing fee paid.

Conclusion

For the above reasons, I dismiss the landlord's application for compensation, without leave to reapply.

For the above reasons, I dismiss the tenant's application for compensation, without leave to reapply.

I order the landlord to pay the tenant the amount of $1,300.00 as reimbursement of the security deposit. I grant the tenant a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 23, 2020

Residential Tenancy Branch