Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the "*Act*"), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord, their Advocate (the "Landlord"), the Tenant and their Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Digital Evidence

At the outset of these proceedings, the Landlord was advised that 109 of the 148 digital evidence files they submitted through the Residential Tenancy Online Application for Dispute Resolution system, contained zero data. Section 3.10.5 of the Residential Tenancy Branches Rules of Procedure state the following regarding the submission of digital evidence:

> **3.10.5 Confirmation of access to digital evidence**
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> The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution,

the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The Landlord was advised at the outset of these proceedings that pursuant to section 3.10.5 of the rules of procedure, the evidence that was to be contained in those 109 digital files would not be considered in my decision as they were not correctly submitted to the Residential Tenancy Branch.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on May 1, 2019, as a one-year fixed term tenancy, that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of $2,700.00 was to be paid by the fourth day of each month, and the Landlord had been given a $1,350.00 security deposit at the outset of the tenancy. The Landlord and the Tenant provided a copy of the tenancy agreement into

documentary evidence. The Landlord also submitted a copy of an agreement, signed between these parties, to change the rent due date to the fourth day of each month into documentary evidence.

The Landlord testified that the amount of the security deposit for this tenancy had been recorded incorrectly on the tenancy agreement. Both parties confirmed that the Tenant had paid a $1,350.00 security deposit for this tenancy. The Landlord and the Tenant submitted a copy of the receipt issued for the security deposit into documentary evidence.

The Landlord testified that the move-in inspection had been completed at the beginning of this tenancy but that they did not sign the inspection report, as required by the Act. The Landlord testified that they were new Landlords and did not understand the requirement to sign the document.

The Tenant testified that the move-in inspection was not completed at the beginning of this tenancy, that they paid the rent and security deposit and then move-in. The Tenant provided a copy of a started but not completed and unsigned move-in inspection report into documentary evidence.

The parties agreed that the Tenant served the Landlord with their notice to end their tenancy by email sent on April 24, 2020. The parties also agreed that the Tenant moved-out of the rental unit, in accordance with their Notice on May 1, 2020, and that the Landlord and the Tenant conducted the move-out inspection the following day. The Landlord is requesting the recovery of their lost rental income for May 2020, in the amount of $2,700.00, due to the Tenant’s short notice to end their tenancy.

The Landlord testified that they are requesting $600.00 for cleaning the rental unit after the Tenant moved out of the rental unit, stating that the tenant returned the rental unit to them in a very uncleaned and damaged state. The Landlord provided a copy of the invoice for cleaning services and a three-page damage list into documentary evidence.

The Landlord testified t a list of 63 items that required cleaning or had been damaged at the end of this tenancy. When asked by this Arbitrator if this list of cleaning and damages had been recorded on the move-out inspection report, the Landlord testified that they had not been noted on that move-out inspection report. When asked by this Arbitrator if this list of cleaning and damages had been verbally discussed with the Tenant during the move-out inspection, the Landlord testified that they had not been

discussed during the inspection as the Landlord had felt overwelled during the move-out inspection and had chosen not to discuss these deficiencies at the time.

The Tenant testified that they had returned the rental unit to the Landlord, cleaned and undamaged at the end of this tenancy. The Tenant submitted four pictures of the rental unit, taken during the move-out inspection into documentary evidence. The Tenant also provided a copy of the signed move-out inspection report into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I have reviewed the tenancy agreement for this tenancy and I find that the parties to this dispute entered into a one-year fixed term tenancy, starting May 1, 2019, and ending April 30, 2020 and that this tenancy rolled into a month to month (periodic tenancy) as of May 1, 2020, in accordance with the *Act*.

I accept the agreed-upon testimony of these parties that the Tenant served the Landlord with written notice to end their tenancy, sent on April 24, 2020, by email, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the “Emergency Order”).

I also accept the Tenant’s testimony that they moved out of the rental unit, in accordance with their written notice, on May 1, 2020. Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

> **Tenant's notice**
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> ***45*** *(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> *(a) is not earlier than one month after the date the landlord receives the notice, and*
>
> *(b) 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*

In this case, I find that the Landlord received the Tenant notice to end the tenancy on April 27, 2020, three days after it was email to the Landlord. Based on when the

Landlord received the Tenant's notice, I find that this tenancy could not have ended, in accordance with the *Act*, before May 31, 2020.

The Landlord is requesting $2,700.00 in lost rental income for the month of May 2020, due to the Tenant's short notice to end the tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "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. To determine whether compensation is due, the arbitrator may determine whether:
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> - 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.

I find that the Tenant was in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept that the Landlord's testimony that they suffered a loss of rental income for May 2020 due to the Tenant's short notice and that they have proven the value of that loss. However, before I am able to make an award of compensation, I must also determine if the Landlord has acted reasonably to minimize that loss. In this case, the Landlord testified that they made no attempt to secure a new renter to take over this rental unit after they received the Tenant's notice to end this tenancy and that as of the date of this hearing they had continued to make no attempt to re-rent the rental unit.

I find that the Landlord was in breach of section 7 of the *Act* when they did not act reasonably to minimize their damage or loss in this case, by attempting to secure a new renter to take over this rental unit. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of May 2020.

The Landlord has also claimed for $600.00 to recover their cost to have the rental unit cleaned at the end of the tenancy. During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator normally looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit. Section 23 of the Act states the following:

> ***Condition inspection: start of tenancy or new pet***
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> ***23*** *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
>
> *(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
>
> *(a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
>
> *(b)a previous inspection was not completed under subsection (1).*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(4) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
>
> *(6) The landlord must make the inspection and complete and sign the report without the tenant if*
>
> *(a)the landlord has complied with subsection (3), and*
>
> *(b)the tenant does not participate on either occasion.*

I have reviewed the move-in inspection report submitted into evidence, and I find that the move-in inspection had not been conducted in accordance with the *Act*, as it was

not signed or dated by either party and that only four “G” had been on the entire report. Section 24 of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

> ***Consequences for tenant and landlord if report requirements not met***
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> ***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*
>
> *(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*
>
> *(b) having complied with section 23 (3), does not participate on either occasion, or*
>
> *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

I find that the Landlord breached section 23(1) of the *Act* when they did not complete the required move-in inspection of the rental unit, in accordance with the *Act*. Therefore, I find that the Landlord has extinguished her right to make a claim against the security deposit for damage to the residential property, pursuant to section 24(2).

As for the move-out inspection, I accept the testimony and documentary evidence of these parties that they did complete a move-out inspection report for this tenancy, as required by the *Act.* However, I note that none of the required cleaning or damages that the Landlord testified to during these proceedings, had been recorded on the inspection report.

It is the legal responsibility of the Landlord to ensure that they or their assigned agent are prepared to conduct a professional and accurate move-in and move-out inspection. I find that there is a requirement to ensure that the inspection report accurately records any deficiency in the rental unit during the inspection and that those deficiencies are clearly communicated to the other party during that inspection. I find the action of willing recording that the rental unit was returned in good condition, or recording nothing at all, at the time of inspection and then backtracking to claiming for $600.00 in compensation for cleaning that ought to have been easily noticeable as deficient, and communicated as such, during the inspection, to be an unprofessional action.

I have also reviewed the Landlord’s entire documentary evidence submissions, and I find that there is no evidence before me to support the Landlord’s claim that the rental unit had been returned to them unclean and damaged. As the burden is on the Landlord to establish their claim in these proceedings, I find that there is insufficient evidence

before me to show that the Tenant had returned the rental unit uncleaned and damage as the Landlord is claiming. Consequently, I dismiss the Landlord's claim for the recovery of $600.00 in cleaning costs in its entirety.

As the Landlord has failed in their claim against the Tenant's security deposit, I find that the Landlord is not entitled to retain the security deposit for this tenancy. I order the Landlord to return the security deposit that they are holding, in the amount of $1,350.00, for this tenancy to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenant's security deposits to the Tenant within 15 days of the date of this decision.

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 5, 2020

Residential Tenancy Branch