



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

This hearing originally convened on June 19, 2020 and reconvened on July 21, 2020. The tenant did not attend either hearing, although I left the teleconference hearing connections open for at least 10 minutes for each hearing in order to enable the tenant to call into these teleconference hearings. The landlord's agent attended the hearings and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution on January 31, 2020 via registered mail. The Canada Post receipt and tracking number evidencing same was entered into evidence. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This fixed term tenancy began on October 13, 2017 and was originally set to end on October 31, 2018. Monthly rent in the amount of \$9,450.00 was payable on the fifteenth day of each month. A security deposit of \$4,725.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on January 29, 2020.

The landlord's agent testified that the tenant did not speak English very well, and that most communications went through the tenant's agent. The landlord's agent testified that shortly after the tenancy began, the tenant informed the landlord that he had a death in the family overseas and would have to end the tenancy early; however, no formal notice to end tenancy was provided to the landlord.

The landlord's agent entered into evidence an email from the tenant to the landlord's agent dated November 22, 2017 which states:

Although I have provided my driver's licence picture to you via mobile phone message, on which has my address, and I have sent you the NOTICE TO END

TENANCY via registered mail, on the envelope of the registered mail also has my address, I , here, inform you again that my forwarding address is [forwarding address]

I will file an Application for Dispute Resolution in the Residential Tenancy Branch soon to resolve our rental dispute. I will submit a printout of this email, sending driver's licence message screenshot, and registered mail picture as the proofs that I have you (the landlord my forwarding address in writing.

The landlord's agent denied receiving the above referenced Notice to End Tenancy via registered mail.

The landlord's agent testified that the landlord believed that the tenant was planning on moving out so arranged to complete a move out condition inspection report with the tenant's agent. The landlord's agent testified that a move out condition inspection was completed with the tenant's agent on November 29, 2017 but all of the landlord's possessions were still in the subject rental property. The November 29, 2017 move out condition inspection report was entered into evidence but does not make any reference to possessions left at the subject rental property. The landlord's agent testified that he informed the tenant that a subsequent move out condition inspection report would be required once the tenant removed his possessions; however, a second report was not completed.

The landlord's agent testified that at the beginning of the tenancy the tenant made a lump sum rental payment covering rent from the beginning of the tenancy to February 2018. The landlords' agent testified that no further rent payments were made. The landlord's agent entered into evidence the following email sent to the tenant and his agent:

- December 15, 2017- Further to the move out walkthrough, [the tenant's agent] did not agree to sign the condition inspection report. We also observed that the premise still contains your personal belongings. Please advise us when this will be removed. Once all of the items are removed, we will conduct another walk-through inspection. Please let us know when this will be completed.

On December 15, 2017 the tenant's agent responded via email as follows:

- I cannot get a hold of [the tenant] as he is out of the country. As you know he is going through a personal matter, he should be in contact very soon. [The tenant] told me to use the security deposit for the rent and to clean the property.

On March 10, 2018 the landlord's agent emailed the tenant and the tenant's agent as follows:

- I hope everything is well. We have not received a response from you in several months and perhaps you have not been receiving our messages from [another country]. Further to our lease agreement, the next installment of rent is past due. Please advise if you will be sending a wire transfer or if there is another method of payment. Please advise.

On March 11, 2018 the tenant's agent emailed the landlord's agent as follows:

- I cannot reach him now. The last time we spoke was to leave this for now and will contact us when he returns. He does not give permission for access for showings.

On March 26, 2018 the landlord's agent emailed the tenant and the tenant's agent as follows:

- Just a reminder that the unit must be professionally cleaned to its original condition as per the lease agreement. I will be available to conduct a move-out walkthrough on March 30th or March 31st. All items must be removed by then, or the incoming tenant will be delayed.

The landlord's agent testified that the tenant moved his belongings out of the subject rental property and returned the keys to the landlord on April 3, 2018. The landlord's agent testified that the new tenants moved in on April 4, 2018.

The landlord's agent testified that the tenant was supposed to move out on March 31, 2018 but failed to do so which jeopardized the new tenancy which was set to begin on April 1, 2018. The landlord's agent testified that the new tenant almost walked away from the tenancy agreement because the could not move in on April 1, 2018. The landlord's agent entered into evidence the new tenancy agreement which states in part:

- The tenancy created by this agreement starts on April 1, 2018 and ends on August 31, 2018; and
- Monthly rent in the amount of \$6,800.00 is due on the first day of each month.

The landlord's agent testified that the tenant refused to grant permission to show the subject rental property which made finding a new tenant difficult, as did the time of year the tenancy ended.

The landlord's agent testified that the landlord started advertising the subject rental property for rent on March 22, 2020 and later hired a realtor to find a new tenant. The

landlord 's agent entered into evidence a contract with a realtor to find a new tenant dated November 19, 2017. The contract states:

- The cost of the service is 50% of one months' rent;
- The initial asking price is \$7,450.00. Should the premises not rent at this price rate in a timely manner, it may be necessary to lower the rental asking price range.

The landlord's agent testified that they were not able to find a new tenant at the same rental rate as that paid by the tenant. The landlord's agent testified that the real estate agent had to drop the price to \$6,800.00 to secure a new tenant.

The landlord's agent testified that the landlord is seeking \$9,450.00 in unpaid rent for March 2018 and the difference between the rent the landlord would have received under the tenancy agreement and what he received from the new tenant between April 2018 and October 2018. Seven months at \$2,650.00 per months equals \$18,550.00. The landlord's agent testified that the landlord is also seeking to recover the re-leasing fee of \$3,570.00.

The landlord's agent testified that the landlord is seeking the following damages arising from this tenancy:

- Replace burnt out light bulbs- \$100.00;
- Cleaning- \$150.00;
- Painting- \$364.69; and
- Replace damaged tiles- \$300.00

Light Bulbs

The landlord's agent testified that four light bulbs at the subject rental property were burnt out when the tenant moved out. The landlord's agent testified that term 9 of the addendum to the tenancy agreement states:

After moving out, tenant is responsible for having the suite professionally cleaned, burn lightbulbs replace and having the walls returned in its original condition. If this is not completed, the landlord has the right to charge \$25.00 per burn lightbulb and \$50.00 per hour for cleaning.

The tenant signed the addendum.

The landlord's agent testified that the landlord is seeking \$100.00 for four burnt lightbulbs.

Cleaning

The landlord's agent testified that the tenant did not clean the subject rental property on move out and that a professional cleaner was hired to clean the subject rental property after the tenant moved out. The landlord entered into evidence a cleaning receipt dated January 10, 2018 in the amount of \$150.00.

I asked the landlord's agent how the cleaning was completed on January 10, 2018 if the landlord did not get possession until April 3, 2018. The landlord's agent testified that his colleague must have uploaded the wrong cleaning receipt which must have been for a different property. The cleaning receipt entered into evidence states the subject rental address as the address of the property that was cleaned.

Painting

The landlord's agent testified that the tenant damaged the walls of the subject rental property when he moved out and the walls therefore had to be repaired and re-painted. The landlord's agent entered into evidence receipts for paint and labour dated December 27, 2017.

I asked the landlord's why the receipts are dated before the date the landlord's agent testified the tenant moved out. The landlord's agent testified that the tenant granted the landlord access to the subject rental property prior to the end of the tenancy to make the required repairs. The landlords' agent did not provide any clarification on how damages which occurred on move out were repaired before the tenant moved out.

Damaged tiles

The landlord's agent testified that the tenant damaged tiles in the subject rental property which cost \$300.00 to fix. No receipts were entered into evidence.

Analysis

Section 60(1) of the Act states:

If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to

which the matter relates ends or is assigned.

The landlord's agent testified that this tenancy ended on April 3, 2018 and so the landlord's application for dispute resolution was filed within the two-year limitation period. I find that while the landlord's agent provided some supporting evidence to establish that this tenancy ended between March 2018 and April 2018, namely the email from the tenant's agent dated March 11, 2018, I find that the remainder of the submitted evidence does not support this conclusion.

The cleaning receipt entered into evidence is dated January 10, 2018. I find that the landlord would not have hired a cleaner to clean the subject rental property before the tenant moved out. The landlord's agent testified that the wrong receipt was uploaded into evidence, however the receipt clearly states the address of the subject rental property. Given the inconsistencies in the landlord's agent's testimony, I find his testimony to be not credible.

I find it improbable that the landlord would commission wall and painting repairs 2.5 months into a tenancy if that tenancy were continuing. The landlord's agent testified that the wall damage occurred on April 3, 2018 when the tenant moved out and provided a receipt for the repairs dated December 27, 2017. When asked to explain this discrepancy, the landlord's agent testified that the tenant authorized access for the repairs to be made prior to the end of the tenancy. The landlord's agent did not explain how damages that occurred on move out (April 3, 2018) were repaired over three months earlier.

In addition, the landlord's agent testified that the subject rental property was marketed for rent online on March 22, 2018 and a realtor was later hired to market the property. The realtor agreement entered into evidence was dated November 19, 2017. I find that the timeline of events provided by the landlord's agent does not accord with the evidence provided.

I find that the dates of the completed repairs and cleaning of the subject rental property are a more reliable indicator as to the date the tenancy ended than the March 11, 2018 e-mail. I find that the landlord's agent's testimony was not credible as it contradicted the physical evidence provided. Based on my above findings and the evidence provided, I find that this tenancy ended by January 10, 2018, the date the subject rental property was cleaned. The landlord's agent filed their application for dispute resolution on January 29, 2020. I find that this application was made more than two years after the date the tenancy ended contrary to section 60(1) of the Act. The landlord's application is

therefore dismissed.

Conclusion

The landlord's application is dismissed without leave to reply.

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: July 20, 2020

Residential Tenancy Branch