Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for monetary loss or other money owed;
- Unpaid rent and utilities;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit for money owed.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Landlord's documentary evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the mailing addresses listed in the Application.

Preliminary Matters

Matter #1

Although the Tenant stated that they had mailed documentary evidence to the Residential Tenancy Branch (the "Branch") for my consideration approximately one and a half months prior to the hearing, this documentary evidence was not before me for consideration and there is no indication in the Branch records for this file that this

evidence was ever received. Further to this, the Tenant acknowledged that this documentary evidence was never given to the Landlord.

Rule 3.15 of the Rules of Procedure states that all evidence that the respondent wishes to rely on at the hearing must be received by the Applicant and the Branch not less than 7 days before the hearing. The ability to know the case against you is also fundamental to the dispute resolution process. As the Tenant's documentary evidence was not before me for consideration, I therefore could not review or consider it in rendering this decision. Further to this, the Tenant acknowledged that their documentary evidence was not served on the Landlord and as a result, I find that even if it had been before me for review, I would have excluded it from consideration, as its acceptance and consideration would have been a breach of both the Rules of Procedure and the principles of natural justice as the Landlord was not provided with an opportunity to review and consider it prior to the hearing.

Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to reimbursement for unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit for money owed?

Background and Evidence

The parties agreed that prior to moving into the rental unit which is the subject of this Application, the Tenant resided in a basement suite located in the Landlord's home. The parties agreed that rent for the basement suite was $1,550.00 per month, plus $50.00 per month for electricity, and that a $775.00 security deposit was paid. The tenancy agreement for the rental unit which is the subject of this Application states that the six

month fixed-term tenancy began on November 1, 2019, and was set to become month to month at the end of the fixed-term on May 1, 2020. The tenancy agreement states that rent in the amount of $3,900.00 is due on the first day of each month, that only water and garbage collection are included in rent, and that a $775.00 security deposit was to be paid by November 1, 2020.

The parties agreed in the hearing that these are the correct terms for the tenancy agreement, except in relation to the security deposit. The Landlord stated that the Tenant never paid a new security deposit upon moving into the rental unit as required, but that they still hold the Tenant's $775.00 security deposit from the basement suite, which they would like authorization to retain. The Tenant disagreed, stating that they paid the Landlord $1,950.00 as a security deposit for the rental unit which is the subject of this Application, which represents half a month's rent. The parties also agreed that although the Tenant rented the entire home from the Landlord, the Tenant had permitted additional occupants to reside in the lower portion of the home.

The parties agreed that the tenancy subsequently ended in early February 2020, as the result of a 10 Day Notice to End Tenancy for Unpaid Rental and Utilities (the 10 Day Notice) dated February 2, 2020, but could not agree on the exact date. The Tenant stated that the tenancy ended approximately February 8, 2020, whereas the Landlord stated that it was approximately February 20, 2020. The Tenant then pointed to the receipts for cleaning and garbage removal submitted by the Landlord dated February 18, 2020, and February 20, 2020, and argued that the timeline given by the Landlord for the end of the tenancy is clearly incorrect based on their own documentary evidence. The parties also disputed whether the Landlord forcefully and unlawfully ended the tenancy by changing the locks prior to the effective date of the 10 Day Notice and without an Order from the Branch authorizing them to do so.

Although the parties agreed that no move-out condition inspection or report was completed, they disputed whether a move-in condition inspection and report were completed in compliance with the *Act* and regulations. The Landlord stated that an inspection was completed but the Tenant disagreed. The Tenant also stated that they were never provided with a copy of any condition inspection report. During the hearing the Landlord stated that they have not received the Tenant's forwarding address in writing and stated that they found the Tenant's address by following them to their new place of residence. The Tenant agreed that they never provided their forwarding address to the Landlord.

Although the parties agreed that the Tenant paid only $3,100.00 in rent for January 2020, and nothing for February of 2020, the Tenant stated that the remaining $800.00 in January rent and the $3,900.00 in rent for February was withheld pursuant to section 33 of the *Act* as they had completed emergency repairs to the roof as it has a substantial leak. The Landlord denied that emergency repairs were either required or completed by the Tenant and denied receipt of any documentary evidence from the Tenant in relation to emergency repairs, such as receipts for work done or materials purchased. Although the Tenant stated that they had receipts and documentary evidence of the repairs required and completed, as set out in the preliminary matters section of this decision, this documentary evidence was not before me for consideration. As a result, the Landlord stated that the Tenant did not have authority under section 33 of the *Act* to withhold rent for emergency repairs and therefore owes $800.00 in outstanding rent for January 2020 and $3,900.00 in outstanding rent for February 2020.

There was no dispute between the parties that the rental unit was not left reasonably clean at the end of the tenancy; however, the Tenant argued that they were prevented from cleaning the rental unit as the Landlord changed the locks before the effective date of the 10 Day Notice and prevented them from returning to do any cleaning. The Tenant also stated that the Landlord called the police on them, alleging to have an Order of Possession for the rental unit, which they did not have. As a result, the Tenant argued that they should not be responsible for cleaning or garbage removal costs. The Landlord denied changing the locks until after the Tenant had vacated the rental unit and stated that the Tenant moved out voluntarily as a result of the 10 Day Notice, without providing the Landlord with a move-out date and without cleaning the rental unit. The Landlord submitted 23 photographs of the rental unit for my review, allegedly taken after the tenancy had ended, and receipts for $500.00 in cleaning costs and $700.00 in garbage removal and dump fees. As a result, the Landlord sought $1,200.00 for the cost of cleaning the rental unit and garbage removal.

The Landlord stated that the Tenant also broke a toilet in the rental unit and sought $100.00 in repair costs. In support of this testimony, the Landlord provided two photographs of the toilet. The Tenant denied breaking the toilet and stated that both the Landlord and occupants residing in the lower portion of the home had access to the rental unit after they vacated, and that this damage could easily have been caused by them. As a result, the Tenant stated that they should not be responsible for these costs. The Landlord denied damaging the toilet and stated that occupants residing in the lower portion of the home did not have access to the upper unit. In any event, the Landlord stated that even if the occupants of the lower portion of the rental unit had damaged the

toilet, the Tenant would be responsible for this cost as the occupants had been permitted onto the property by the Tenant.

The Landlord also sought $3,900.00 in lost rent for March of 2020 as they stated that the rental unit was not re-rented until April 1, 2020. The Landlord stated that it was advertised at $3,900.00 per month, the same rent amount as that stipulated in the Tenant's tenancy agreement, on approximately March 1, 2020, and that it was not advertised in February after it was cleaned as the Landlord felt that it not worth it as it was already past the 15th. The Landlord also stated that the occupants permitted by the Tenant to reside in the lower portion of the rental unit did not vacate at the same time as the Tenant, resulting in a delay in their ability to re-rent the unit.

The Tenant acknowledged that they had permitted occupants to reside in the lower portion of the home but disagreed that they should be responsible for any lost rent, as they believe that the rental unit was re-rented two weeks after they moved out. The Tenant stated that the occupants and the Landlord had reached an agreement for the occupants to rent the home, but the Landlord later backed out of this agreement, resulting in the need to find new tenants and the loss of rent for March 2020.

The Landlord stated that the Tenant did not pay the gas bill as required and submitted a copy of the bill dated December 21, 2019, for my review. Although the Landlord originally sought full payment of the bill in the amount of $460.27, during the hearing the Landlord acknowledged that the bill covered a portion of time prior to the tenancy, and therefore sought only $230.13 from the Tenant, 50% of the billed amount. The Tenant stated that the bill submitted by the Landlord contains a previous unpaid balance of $358.76 for which they should not be responsible as it predates the start of the tenancy. Although the Tenant acknowledged that the bill also contains charges incurred during their tenancy, they stated that the Landlord never gave them the bill, which is why it was never paid.

The Landlord also sought recovery of the $100.00 filing fee.

Analysis

Although the Tenant stated that they paid a $1,950.00 security deposit, the Landlord denied this testimony, stating that no security deposit for this rental unit was ever paid. Based on the conflicting testimony of the parties and the lack of documentary or other evidence from the Tenant that this amount was paid, I find that I am not satisfied that

the Tenant paid any amount to the Landlord as a security deposit for the rental unit which is the subject of this Application.

Although the Landlord sought authorization in the Application to withhold the $775.00 security deposit paid by the Tenant for their previous tenancy at a different address and under a different tenancy agreement, as set out in Policy Guideline #13 and #17, security deposits are paid and retained in trust in relation to rental units and tenancy agreements, not specific Tenants. As a result, I find that the $775.00 security deposit retained by the Landlord does not relate to either this tenancy or the dispute address for this Application. I therefore declined to deal with this security deposit as a part of this Application and the Landlord's claim for retention of this $775.00 is dismissed. The parties must deal with this security deposit in relation to the Tenant's previous rental unit as required by the *Act*. Both parties remain at liberty to file Applications in relation this security deposit for the previous rental unit, should they find it necessary to do so.

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Although the Tenant stated that $800.00 in rent for January 2020, and $3,900.00 in rent for February 2020, were withheld under section 33 of the *Act*, they did not submit any documentary evidence demonstrating that they either completed and paid for emergency repairs, or complied with the requirements set out under section 33 of the *Act* for reimbursement of emergency repairs. Further to this, the Landlord denied that the Tenant was entitled to deduct rent for emergency repairs as they stated that they had never received any receipts. As a result, I am not satisfied that the Tenant was entitled to deduct this rent pursuant to section 33 of the *Act* as I am not satisfied that the Tenant had complied with section 33 (5) prior to withholding rent. I therefore find that the Landlord is entitled to recovery of the $4,700.00 in unpaid rent withheld by the Tenant without authority under the *Act*.

Although I have found that the Tenant was not entitled to withhold rent as a result of emergency repairs, I have made no other findings of fact or law with regards to section 33 of the *Act*. As a result, the Tenant therefore remains at liberty to file a claim in relation to reimbursement for the completion of emergency repairs if they have subsequently complied with section 33 (5) of the *Act*.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Although the parties agreed that the rental unit was not left reasonably clean at the

end of the Tenancy, the Tenant argued that the Landlord locked them out and prevented them from cleaning the rental unit. The Landlord denied this allegation. As the Tenant did not submit and documentary or other evidence for consideration in support of their testimony, I therefore find that I am not satisfied that the Landlord prevented them from clearing the rental unit at the end of the tenancy. Based on the documentary evidence from the Landlord, I am satisfied that the rental unit was not left reasonably clean and that that the Landlord incurred $1,200.00 in cleaning and garbage removal costs as a result. Pursuant to sections 7 and 37 of the *Act*, I therefore find that the Landlord is entitled to recovery of this amount from the Tenant.

Although the Landlord sought $100.00 for toilet repairs, the Tenant denied damaging the toilet and no move-in or move-out condition inspection reports were submitted for my review. Further to this, although the Landlord submitted two photographs of the toilet, the photographs are undated and no invoices or receipts were submitted demonstrating that repairs were in fact completed or showing the value of any completed repairs. As a result, I find that the Landlord has failed to satisfy me on a balance of probabilities that the toilet was damaged during the tenancy. The Landlord has also failed to satisfy me of the value of any repairs completed. I therefore dismiss this portion of the Landlord's claim without leave to reapply.

The tenancy agreement in the documentary evidence before me states that the only utilities included in rent are water and garbage and during the hearing there was no disagreement between the parties that other utilities were the responsibility of the Tenant. Although the Landlord submitted a gas bill for the rental unit in the amount of $460.27 and sought recovery of 50% of this amount from the Tenant, I find that this is not reasonable, as the bill includes $358.76 in previous unpaid charges incurred before the start of the tenancy. The remaining $101.51 in charges cover a 30-day billing period from October 31, 2019 – November 29, 2019. As the tenancy started on November 1, 2019, I find that the Tenant is only responsible for utility charges on and after November 1, 2019. I therefore find that the Tenant is only responsible for $98.12 of the total gas bill; the $101.51 in current charges divided by 30 (the number of days in the billing period), multiplied by 29 days (the number of days the Tenant is responsible for during the billing period).

Although the Landlord stated that the rental unit was not re-rented until April 1, 2020, the Tenant stated that it was actually re-rented within 2 weeks. The Landlord did not submit any documentary evidence in support of this testimony that it was not re-rented until April 1, 2020. The Landlord also acknowledged in the hearing that the rental unit was not advertised for rent until approximately March 1, 2020. Although the Landlord

stated that other occupants of the rental unit refused to move out, resulting in a delay in re-renting the unit, they did not submit any documentary or other evidence to support this claim. As a result, I am not satisfied that this is the case. Further to this, the Landlord stated in the hearing that they did not post the unit for re-rental in February as it was not ready until after the 15th of the month and they therefore felt like it was not worth posting until March. As the cleaning and garbage removal receipts are dated February 18, 2020, and February 20, 2020, I find that the Landlord could and should have begun advertising the rental unit on or immediately after February 20, 2020, as they may well have been able to secure a Tenant for the end of February or for March 1, 2020. Based on the above, I find that the Landlord failed to mitigate their loss by failing to advertise the rental unit for re-rental as soon as reasonably possible, and I therefore dismiss their claim for lost March 2020 rent without leave to reapply.

As the Landlord was at least partially successful in their claim, I award them recovery of the $100.00 filing fee pursuant to section 72 of the *Act*.

Based on the above and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary order in the amount of $6,098.12 and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$6,098.12**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

While I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Dated: August 6, 2020

Residential Tenancy Branch