Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Fort Nelson Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT
MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (the Tenant's Application) under the Residential Tenancy Act (the Act) on March 31, 2020, and an Amendment to the Application filed on April 2, 2020, seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

This hearing dealt with an Application for Dispute Resolution filed by the Landlord (the Landlord's Application) under the Act on March 31, 2020, seeking:

- Compensation for monetary loss or other money owed;
- Compensation for damage;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit and or pet damage deposit against any money owed.

The hearing was convened by telephone conference call and was attended by the Tenant, an agent for the Landlord (the Agent), and the Agent's secretary, all of whom provided affirmed testimony. The parties acknowledged service of each other's Applications and documentary evidence and the Notice of Hearing. As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me from both parties for review and consideration in these matters. During the hearing the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of

Procedure (the Rules of Procedure), I refer only to the relevant and determinative 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 emailed to them at the email addresses provided in their respective Applications.

Issue(s) to be Decided

Is either party entitled to compensation for monetary loss of other money owed?

Is the Landlord entitled to compensation for damage to the rental unit?

Is either party entitled to recovery of the filing fee?

Is the Landlord entitled to retain the security deposit and or the pet damage deposit, and if not, is the Tenant entitled to their return or double their amounts?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on March 15, 2020, and that rent in the amount of $1,000.00 is due on the first day of each month. The tenancy agreement also states that security and pet damage deposits were to be paid in the amount of $500.00 each. During the hearing the parties agreed that $500.00 was paid by the Tenant towards the security deposit, that $275.00 was paid towards the pet damage deposit, and that the remaining $225.00 owed for the pet deposit was carried forward from a previous deposit paid to the Landlord by the Tenant. As a result, the Agent stated that the Landlord still holds $1,000.00 in deposits in relation to the tenancy.

Although both parties agreed that the Tenant got keys to the rental unit on March 4, 2020, they disputed whether the Tenant ever moved into the rental unit and why the keys were provided early. The Tenant stated that the keys were provided to them early so that they could paint the rental unit ahead of the start of the tenancy and that they never moved anything into the rental unit except for some painting supplies and snacks. The Agent agreed that the Tenant was permitted to paint the rental unit and was provided early access to the rental unit in order to do so. However, the Agent argued the Tenant was also permitted to move into the rental unit early, which the Agent stated they did. When asked what the Tenant was charged for early access to the rental unit, the Agent stated that the Tenant was not charged for this.

Despite their disagreement about whether the Tenant moved into the rental unit, the parties agreed that a move-in inspection was completed. However, the Tenant denied being provided with a copy of a move-in inspection report or being asked to sign one. Although the Agent stated that a move in condition inspection report was completed, a copy of which was submitted for my review, they acknowledged that it was not signed by the Tenant and that they are unsure of whether the Tenant ever received a copy, as this would have been handled by the office.

There was no disagreement between the parties that the heating system in the rental unit was not functioning, or was not functioning correctly, at the time the Tenant received keys for the rental unit on March 4, 2020, or that it had not yet been repaired by March 15, 2020, the start date for the tenancy under the tenancy agreement. There was also no dispute between the parties that the Landlord and the Agent were aware of this issue. The parties agreed that on approximately March 16, 2020, the Agent was verbally advised by the Tenant that they would not be moving into the rental unit due to the lack of heat. During the hearing the Tenant acknowledged being advised at that time that they would be responsible for any costs associated with breaking the tenancy agreement. Although the Tenant stated that the heating system was never fixed, the Agent stated that the heating system was repaired on March 17, 2020, two days after the tenancy was scheduled to commence and that the repair was only delayed as the Landlord was waiting for parts.

As a result of the above, the Agent argued that it was not necessary for the Tenant to break their tenancy agreement, as the furnace repair was actively being pursued and the furnace was repaired only two days after start date for the tenancy. However, the Tenant argued that they should not be responsible for any costs for breaking the tenancy agreement as it was winter and there was no heat in the rental unit, rendering it uninhabitable for them and their children. As a result, the Tenant stated that it was the Landlord who broke the tenancy agreement, not them, by failing to provide a rental unit with heat.

The parties agreed that no move out condition inspection was completed with both parties present. The Tenant argued that one was not completed or required as they never moved in and that no move out inspection was ever proposed or offered by the Landlord or their agents. The Agent stated that a move out inspection was “probably” discussed with the Tenant by phone, but could not be sure, and acknowledged that no notices regarding a move out inspection were ever served on the Tenant or posted to the door of the rental unit as the Tenant did not reside there. Despite the above, a copy

of a move out condition inspection report was provided by the Agent for my review, which appears to have been completed in the absence of the Tenant. Both parties agreed that the Agent was provided with the Tenant's forwarding address in writing on March 16, 2020, and that they were also aware of this address because the Tenant's forwarding address is also owed by the Landlord and was rented to the Tenant by the Agent.

The Tenant sought recovery of $1,275.00 in costs incurred to paint the rental unit, including labour and painting supplies, as they believe they should be reimbursed for these costs as they were never able to move into the rental unit due to a lack of heat and the Landlord's breach of the tenancy agreement and Act. The Tenant submitted receipts in support of a portion of this claimed amount. The Agent argued that the Tenant should not be reimbursed for painting costs as the Tenant chose to paint the rental unit for their own benefit. The Agent also stated that the rental unit was not fully or correctly painted by the Tenant and therefore needed to be repainted at a cost of $500.00. Although a quote for a higher amount was submitted with the Landlord's Application, the Agent stated that it only cost $500.00 and as a result, that is the amount the Landlord is seeking. No proof of the $500.00 cost was submitted. The Tenant argued that they should not be responsible for the repainting costs as the painting was not completed due to the Landlord's breach of the Act and the tenancy agreement by failing to provide a functional primary heating system for the rental unit.

The Agent acknowledged that the rental unit was re-rented at the same rental rate under a month to month tenancy agreement, and as a result, the Landlord has not currently suffered a loss of rent. The Agent therefore withdrew the portion of the Landlord's claim related to lost rent.

Both parties sought recovery of the filing fee.

Analysis

Although the Agent argued that the Tenant moved into the rental unit early on March 4, 2020, the Tenant denied this, stating that they were only permitted early access to the rental unit for the purpose of painting. During the hearing the Agent acknowledged that no rent was charged for early access to the rental unit. Based on the above, and as both parties agreed that the Tenant was permitted to paint the rental unit ahead of the scheduled start date for the tenancy, I find that I am not satisfied that the Tenant gained access to the rental unit on March 4, 2020, for any purpose other than painting or that the Tenant ever moved into the rental unit.

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the provision of a working primary heat source is therefore a requirement under the Act, as a heat source is required for the health and safety of tenants and to render rental units suitable for occupation. I also find that the provision of a functional primary heat source is a material term of the tenancy agreement, much like the payment of rent, as one cannot reasonably be expected to reside in a rental unit without the ability to heat it. As both parties agreed that the heating system was not functioning on March 15, 2020, the start date for the tenancy, I accept this as fact.

Although the Agent stated that electric space heaters were offered to the Tenant, the Tenant refuted this testimony, stating that no such offer was given. As the Agent did not submit any documentary evidence to corroborate their testimony that space heaters were offered, and given the Tenant's position that they were not, I am not satisfied that space heaters were in fact offered to the Tenant. As a result, I find that there was no functional source of heat available to the Tenant in the rental unit on March 15, 2020, the date the tenancy was scheduled to commence according to the tenancy agreement. Based on the above, I am satisfied that the Landlord breached section 32(1) of the Act and a material term of the tenancy agreement by failing to provide the Tenant with a functional primary heat source or an alternate heat source for the rental unit.

Despite the above, I find that the Tenant also breached the Act when they verbally ended the fixed-term tenancy early on March 16, 2020, without the Landlord's consent, and in a manner and timeline not allowable under section 45(2) of the Act. Although I acknowledge that the failure to provide a functional primary heat source for the rental unit by the effective date of the tenancy agreement constitutes a breach of a material term of the tenancy agreement as well as section 32(1) of the Act, there is no evidence before me for review that the Tenant served the Landlord with a letter in writing advising them that the failure to provide a functional primary heating system is a breach of a material term of the tenancy agreement, providing them a deadline to correct this issue, and advising them that they will end the tenancy for a breach of a material term if the breach is not corrected as required by the Act and Policy Guideline #8. I therefore find that the Tenant did not lawfully end the tenancy pursuant to section 45(3) of the Act, despite the breach of the material term.

As I have already determined that the Tenant never moved into the rental unit and that the Landlord breached section 32(1) of the Act by failing to have a heat source available for the rental unit at the start of the tenancy, I will now turn my mind to the financial claims of the parties.

Although the Tenant sought recovery of $1,275.00 in painting costs, I dismiss this claim without leave to reapply for the following reasons. First, the Tenant only submitted receipts for paint and supplies totalling $519.78 and submitted no other details regarding the remaining amounts claimed or how they were calculated. Second, the Tenant chose to paint the rental unit for their own benefit and prior to the start of the tenancy. Finally, the Tenant chose to end the fixed-term tenancy early in a manner other than that allowable under the Act. As a result, I therefore find that the Tenant's loss resulted primarily from their own choices, made for their own benefit, not the Landlord's breach of the Act, that they failed to satisfy me of the value of any loss claimed, and that they failed to mitigate any loss resulting from the Landlord's breach of the Act or the tenancy agreement by failing to inform the Landlord in writing that there is a problem, that they believe the problem is a breach of a material term of the tenancy agreement, that the problem must be fixed by a deadline included in the letter (which must be reasonable), and that if the problem is not fixed by the deadline, the party will end the tenancy.

The Landlord also sought $500.00 for the recovery of painting costs, which I also dismiss without leave to reapply, as the Landlord failed to submit proof that they incurred these costs. Further to this, I also find that they failed to mitigate their loss by allowing the Tenant to paint the rental unit prior to the start of the tenancy and by failing to have the primary heating system repaired by the start of the tenancy, despite being aware of the issue and having ample time to do so.

As I have dealt with the monetary claims of both parties, I will now turn to the matter of the security and pet damage deposits. As none of the Landlord's claims related to pet damage, I find that the Landlord was not entitled to retain any portion of the $500.00 pet damage deposit pursuant to Policy Guideline 31 and section 38(7) of the Act. I therefore find that the Landlord was obligated to return this amount to the Tenant within 15 days after March 16, 2020, which is the end date for the tenancy and the date the Agent received the Tenant's forwarding address in writing, pursuant to section 38(1) of the Act. As the Agent acknowledged that this amount was not returned to the Tenant and there is no evidence before me that the Landlord was entitled to retain it under any other section of the Act, I therefore find that the Landlord breached section 38(1) of the Act

and that the Tenant is therefore entitled to the return of $1,000.00, double the amount of the $500.00 pet deposit, pursuant to section 38(6) of the Act.

Despite the above, I find that the Landlord's Application seeking to keep the security deposit was filed in compliance with section 38(1) of the Act, as it was filed within 15 days after March 16, 2020, which is the date the tenancy ended and the date the Landlord received the Tenant's forwarding address in writing. Although the Tenant argued that the Landlord never provided them with a copy of the move in or move out condition inspection reports or requested that they sign them, as required by the Act and the regulations, I find that the Landlord's right to claim against the security deposit was not extinguished pursuant to sections 24(2) and 36(2) as the Landlord's Application for compensation related to the recovery of lost rent and the filing fee, in addition to damage. I also do not find that the Tenant extinguished their right to the return of either deposit. As a result, I find that the Landlord was entitled to retain the security deposit pending the outcome of their Application. However, as the Landlord's Application has been dismissed and no compensation has been awarded to the Landlord, I order that this amount be returned to the Tenant.

As both parties were unsuccessful in their Applications, I decline to grant them recovery of the filing fee.

Based on the above, and pursuant to section 67 of the Act and Policy Guideline #17, the Tenant is therefore entitled to a Monetary Order in the amount of $1,500.00, double the amount of their pet damage deposit, plus the $500.00 security deposit.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$1,500.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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*.

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*. In any event, section 77(2) of the *Act* states that the director does not lose authority in a dispute

resolution proceeding, not is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Dated: September 8, 2020

Residential Tenancy Branch