Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was reconvened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on June 8, 2020 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 27, 2020 for:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for unpaid rent or utilities - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that the Tenants' application for dispute resolution, notice of hearing and 2 pages of evidence was received on June 8, 2020 but that no other evidence was received. The Tenant states that its evidence was sent to the Landlord by mail on September 28, 2020 and postal tracking indicates that it was received September 30, 2020. The Tenant provides the tracking number for the mail. The

Tenant states that they also served the package to the Landlord's residence on September 22, 2020 with a witness but that the Landlord refused to accept the package. The Landlord states that the registered mail was not delivered. The Landlord agrees that the Tenant attempted to leave the evidence package at his house but that the Landlord told the parents not to accept the package. The Landlord argues that the Tenant provided the evidence too late and should not be accepted.

Rule 3.15 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that a respondent's evidence must be received by the applicant and the RTB not less than seven days before the hearing. Given the Landlord's evidence that the Tenant delivered its evidence package to the Landlord's residence and that the Landlord was aware of this delivery I find that the Landlord's decision to instruct the persons at the house to deny the package was an act to avoid service at the Landlord's own peril. As there is no dispute of the delivery of the Tenants' evidence to the Landlord's residence on September 22, 2020 and as the original hearing was held on October 19, 2020, I find that the Tenant served the Landlord in the time required under the Rules. I will accept the Tenants' evidence.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?
Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on February 1, 2017. No move-in inspection was conducted. Rent of $2,650.00 was payable on the first day of each month at the onset of the tenancy, with a rental increase to $2,800.00 as of January 1, 2018 and a rental increase to $2,950.00 as of January 1, 2019. At the outset of the tenancy the Landlord collected $1,325.00 as a security deposit. The Tenants moved out of the unit on February 2, 2020.

The Tenants state that they provided their forwarding address on February 7, 2020. The Landlord states that it received this address on an unknown date but that the Landlord could no rely on this address as valid since the address was out of country.

The Tenants claim return of double the security deposit.

The Landlord states that it received the Tenants' notice to end tenancy on January 27, 2020.

The Tenant states that the Parties mutually conducted a move-out inspection with a completed report copied to the Landlord. The Landlord confirms a mutual inspection with report and states that the Tenant refused to sign the report. The Landlord argues that the Tenants' right to return of the security deposit should therefore be extinguished.

The Tenant states that the Landlord increased the rent during the tenancy for more than allowed under the Act. The Tenant claims return of rents of $2,737.56. The Landlord states that the Tenants agreed in writing to the increases and that this claim is therefore not valid. The Landlord provides a copy of the tenancy agreement that sets out rents to increase as noted above on January 1, 2018 to $2800.00 and on January 1, 2019 to $2,950.00.

The Tenant states that the Landlord did not provide an address for service in the tenancy agreement. The Tenant provides a copy of the tenancy agreement. The Landlord also provides a copy of the tenancy agreement. The Tenant claims the costs of $12.42 for locating the Landlord's address.

The Tennant claims $15.00 as the costs of making copies of its evidence and $7.00 as the scanning costs for that evidence.

The Tenant states that it wants compensation for the water leak. It is noted that the Tenant's application provides no details for this claim and the Tenant's monetary order notes only a possible compensation for this claim with an amount to be determined.

The Landlord states that the Tenant owes arrears of $300.00 as unpaid rent from December 2019. The Landlord states that the Tennant owes arrears of $1,276.70 for January 2020 (3026.70 - 1750) and 3026.70 as unpaid rent for February 2020. The Tenant states that on December 3, 2019 the Landlord agreed to the $300.00 deduction for December 2019 rent as there was a water leak.

The Tenant states that the unit was not liveable in January 2020 and that on December 18, 2019 the Landlord verbally agreed that the Parties could negotiate about the January 2020 rental payment. The Tenant argues that this opportunity to negotiate constitutes an agreement. The Tenant states that the Landlord received the January 2020 rental payment.

The Landlord submits that on January 27, 2020 the Tenants gave one month's notice to end the tenancy informing the Landlord that they would move out on February 27, 2020. The Tenant states that on or about January 30, 2020 the Landlord verbally agreed that the Tenants could leave earlier to start work and that no rent would be paid for February 2020. The Landlord confirms that the Tenants asked to leave early but that there was no agreement for unpaid February 2020 rent. The Landlord provides letters dated January 31, 2020 and February 3, 2020 asking the Tenants for the rent. It is noted that the January 31, 2020 notice to the Tenants sets out rent of $2,950.00 for January 2020 with a remaining balance owing of $1,200.00.

The Landlord states that the Tenants left a hairpin in the washing machine that got stuck in the pump breaking the pump and causing the leak. The Landlord states that the machine came with the building that was new in the summer of 2015. The Landlord states that the Tenant did not call the Landlord about the leak and instead reported it to

the concierge and that as a result two different contractors were called to the unit. The Landlord claims $262.50 for the first contractors call out to inspect the machine and $699.75 for the restoration company's attendance at the unit. The Landlord states that the drywall was cut by the restoration company trying to find the leak. The Landlord argues that the Tenant should have called the Landlord before reporting the leak to the concierge. The Landlord confirms that these bills are not yet paid. The Landlord states that the Tenants were provided with the Landlord's phone number to call. The Landlord states that the Tenant called a third repair person who inspected the machine and found the hairpin. The Landlord paid this repair bill and claims the cost of $400.54. The Landlord provides a copy of this repair report and invoice.

The Tenant states that when the leak occurred the Tenant knew that the Landlord was away on vacation. The Tenant states that it sent an email to the Landlord on January 4, 2020 informing the Landlord about the leak on January 2, 2020. The Tenant states that on January 5, 2020 the Landlord responded and told the Tenant to have someone attend to the problem. The Tenant states that on January 2, 2020 the Tenant spoke with the concierge to find out where the water shut off was located. The Tenant states that the concierge called the first repair person. The Tenant states that the Landlord did not provide an emergency contact and that although the Tenant had the Landlord's phone number this number was not called due to the Landlord being on vacation. The Tenant states that there was a previous leak in the unit on November 16, 2019 and that the leak on January 2, 2020 appeared to be the same. The Tenant states that the leak in 2019 was caused by a pipe burst leading to water in the bedroom. The Tenant states that on January 2, 2020 the water was in the same bedroom and the living room. The Tenant states that the first repair person checked the pipes, did not know what caused the leak and only installed dryers.

The Landlord states that the Tenants' email about the leak was sent to the Landlord on January 5, 2020. The Landlord states that the Tenants tried to repair the problem themselves. The Landlord states that the restoration company attended the unit on

January 30, 2020 and that on January 29, 2020 the Landlord texted the Tenant to cancel the 3rd repair person.

The Tenant states that they did not call the restoration company and believes that the strata called them. The Tenant states that last repair person was called by the Tenant. The Tenant states that the Landlord came to the unit on or about January 30, 2020 and asked the Tenant who the Tenant wanted to call. The Tenant states that the Landlord instructed the Tenant to call the 3rd repair person and that the Landlord would attend at the same time as the repair person. The Tenant states that on January 30, 2020 the repair person found the hairpin and told the Tenants that the problem was with a defective filter that was perhaps old. The Tenant states that it did not cause the damage and that the washing machine never had problems prior to the leak.

The Landlord states that the Tenant left the living room wall dirty and that although the Landlord tried to clean the wall it required painting. The Landlord states that it believes the unit was last painted in January 2017 by the previous tenant and that the paint was otherwise new in 2015 as this is the date of building. The Landlord states that the new paint is set out in the tenancy agreement. The Tenant states that the wall was not dirty and is not noted as being damaged in the move-out report.

The Landlord states that the kitchen and bathroom drawer hinges were left damaged causing the drawers to fall off the hinges. The Landlord states that the drawers had a slow closing system that increased the costs of the hinges. The Landlord states that the repairs were done by a friend and that the amount claimed is a rough estimate of the costs. The Landlord did not provide an invoice and claims $570.00. The Tenant states that the drawers were falling out at move-in and is pre-existing damage.

The Landlord states that the Tenants left the hallway and kitchen ceiling light fixtures were left damaged by the Tenant. The Landlord states that it does not know how the damage occurred. The Landlord provided 2 photos of the light fixtures. The Landlord

states that the work was done by the friend and that there is no invoice or receipt for the payment for the repairs. The Landlord claims $350.00 for the cost of repairing the fixtures. The Tenant states that there was no damage to any light fixtures and that the fixtures only required lightbulb replacement.

The Landlord states that the dishwasher was left leaking and not working. The Landlord states that the repair person found broken glass and other items in the pump. The Landlord states that the repairs were done on March 19, 2020 and that the dishwasher was new in February 2015. The Landlord claims $305.21 and provides a receipt for this cost. The Tenant states that the dishwasher was rarely used and was working at move-out. The Tenant states that the Landlord was asked to check the appliance at move-out but that the Landlord refused to do so.

The Landlord states that after the Tenants moved out of the unit the ledge on the shower door completely fell off. The Landlord believes that perhaps something hit this area of the shower. The Landlord claims $200.00 for its repair. The Landlord states that its friend made the repairs and that there is no invoice for the costs claimed. The Tenant states that there was no damage to this area and that no damage to this area is noted on the move-out inspection.

The Landlord states that the closet doorknob was left broken. The Landlord states that the Tenant had removed the doorknob and that it could not be reinserted. The Landlord claims $320.00 for the replacement cost and confirms that no invoice or receipt was provided for this cost. The Tenant states that it did not damage or remove the doorknob and that no such damage is noted in the move-out inspection.

The Landlord states that the Tenant removed a modem and router that was provided for the tenancy. The Landlord states that a modem was installed in all the units when they were built. The Landlord states that the Tenant did not inform the Landlord of its removal and that it has not since been replaced as the new tenant obtained its own

modem. The Landlord claims an estimated cost of $400.00 for loss of the modem. The Tenant states that the modem that was present at the onset of the tenancy had been left by the previous tenant and that as the Tenant obtained services from a different company the modem was returned to its company. The Tenant states that they left their modem in the unit at the end of the tenancy and that the Landlord has refused to return it to either the Tenants or the company that supplied the modem to the Tenant.

The Landlord claims the costs of registered mail incurred for these proceedings.

The Landlord claims $2,950.00 for management and administrative fees. The Landlord states that these fees are for the work done by the Landlord and that the Tenants caused the Landlord to carry out extra duties.

Both Parties were given a final opportunity to provide relevant evidence that had not been provided during the hearing.

Analysis

Section 24(2) of the Act provides that 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.

Policy guideline #17 sets out that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As the Landlord's right to claim against the security deposit was extinguished at move in by its failure to conduct a move-in inspection, I find that the Landlord must bear the loss and that the Tenant's failure to sign the move-out report has no consequences in relation to extinguishment.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

> If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Nothing in the Act, Regulations or Policy Guidelines prevents a party from using an out of country address as their forwarding address. Given the undisputed evidence that the Landlord received the forwarding address and as the Landlord's evidence of the date of receipt of the address was vague, I prefer the Tenant's evidence that the address was sent on February 7, 2020. I find on a balance of probabilities therefore that the Landlord received the forwarding address on that date. As the Landlord did not return the security deposit or make its application to claim against the security deposit for a few months later I find that the Landlord must now pay the Tenants double the security deposit of **$2,650.00.**

Section 43(1)(c) of the Act provides that a landlord may impose a rent increase only up to the amount

> (a)calculated in accordance with the regulations,
>
> (b)ordered by the director on an application under subsection (3), or
>
> (c)agreed to by the tenant in writing.

Given the undisputed evidence of the rental terms of the tenancy agreement signed by the Tenants I find that the Tenants agreed to the rental increases in writing as set out in

the tenancy agreement. I therefore dismiss the Tenants' claim to return of rental increases.

Section 62(4)(a) of the Act provides that the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part. Given that there are no particulars on the application in relation to compensation for a water leak, as the Tenant's monetary order worksheet only sets out a "possible" claim for compensation for a water leak and as the Tenants' monetary order does not set out any amount being claimed, I find that there are no grounds for this claim, and I dismiss this claim.

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. Section 13(2) of the Act provides that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the address for service and telephone number of the landlord or the landlord's agent. Although the Landlord's copy of the tenancy agreement sets out an address for service, this address is handwritten and not typed in. Given the Tenant's copy that does not contain this handwritten detail I find on a balance of probabilities that the Landlord breached the Act by not providing its address for service. As the Tenants have provided a receipt for the cost of a title search, I find that the Tenants have substantiated the compensation claimed of **$12.42.** As the Tenants' claims have met with some success, I find that the Tenants are entitled to recovery of the **$100.00** filing fee for a total entitlement of **$2,762.42**.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The Tenant's evidence of the Landlord agreeing to a rent reduction of $300.00 for the leak held a ring of truth. For this reason I find on a balance of

proabaiites that the Landlord has not substantiated its lcaim for unpaid rent of $300.00 for December 2019.

Section 42 of the Act provides that

> (2) a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase; and
>
> (3)A notice of a rent increase must be in the approved form.

As there are no terms in the tenancy agreement for rent increases past January 1, 2019, as there is no evidence that the Landlord increased the rent as required under the Act after January 1, 2019 and considering the Landlord's evidence of the notice on January 31, 2020 that rent for January 2020 was $2,950, I find that the rent payable by the Tenants remained at $2,950.00. As the Tenants did not give evidence as to the amount of rent that was paid for January 2020, I accept the Landlord's evidence that the Tenants only paid a portion of the rent required for this month and that the Landlord is therefore owed **$1,200.00** for January 2020 as claimed.

Section 45(1) of the Act provides that 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.

Given the undisputed evidence of the Tenant's one month notice to end the tenancy for February 27, 2020 and as the Tenant has not provided supporting evidence of the Landlord's agreement that no rent was payable for February 2020, I find that the Landlord is entitled to unpaid rent for February 2020 at the last rental rate of **$2,950.00**.

Section 33(3) of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

> (a)emergency repairs are needed;

(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

It is undisputed that the Tenant had a phone number to call the Landlord in case of emergency. Given the evidence that the Tenant did not call the Landlord before reporting the matter to the concierge, I find that the Landlord has substantiated that the Tenant breached this part of the Act. As a result, I find that the Landlord has substantiated the costs incurred by the first repair company on January 2, 2020 in the amount of **$262.50**. Given the undisputed evidence that the Landlord was informed on January 5, 2020 of the problem and as there is no evidence that the Landlord did not know about the repairs by the restoration company done on January 30, 2020 I find that the Landlord has not provided evidence of taking steps to mitigate this loss. I therefore dismiss the claim for $699.75. Given the Landlord's supported evidence from both the restoration company and the final repair person, I find on a balance of probabilities that the Tenants caused the leak from leaving a hairpin in the machine causing the drain pump to not work. Given the Landlord's receipts I find therefore that the Landlord has substantiated its claim for **$400.54**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of invoices or bills for the costs claimed to the paint, drawers, lights, water stop and doorknob I find that the Landlord has not substantiated the costs claimed and I dismiss the claims for these repair costs. As the tenancy ended on February 2, 2020, as there is no indication on the move-out report of any issues with the dishwasher, as the Landlord gives vague evidence of the damage being discovered "later", considering that a new tenancy may have been in place when the dishwasher damage was discovered, and given the Tenant's undisputed evidence that there were no problems with the dishwasher to the

end of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the dishwasher to be damages. I dismiss the claim in relation to the dishwasher. As there is no evidence that the Landlord has suffered any loss or costs in relation to the router/modem I dismiss this claim.

As there is nothing in the Act that allows the Landlord to seek compensation for carrying out its obligations to attend to the unit or any tenancy matters, I dismiss the Landlord's claim for management and administrative fees associated with the tenancy. As the Act does not provide for compensation for the cost of proceedings other than the filing fee, I find that the Landlord has not substantiated its claim for the mailing costs for service requirements to participate in the proceedings and I dismiss this claim. As the Landlord's claim have met with some success, I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$4,913.04**. Deducting the Tenants' entitlement of **$2,762.42** from this amount leaves **$2,150.62** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **$2,150.62**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 18, 2020

Residential Tenancy Branch