Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, FFL**

Introduction
The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord RA attended the hearing ("landlord"). The tenant MC also attended the hearing, ("tenant") represented by her counsel, ZK. As both parties were present, service of documents was confirmed. The tenant confirmed service of the landlord's Application for Dispute Resolution and stated she had no concerns with timely service of documents. The landlord acknowledges being served with the tenant's evidence, however stated she received it late because she threw out the original package of evidence. The landlord acknowledged receiving the tenant's second set of evidence by email and stated she was prepared to proceed with the hearing.

Issue(s) to be Decided
Is the landlord entitled to a monetary order for not receiving a full month's notice to end tenancy from the tenant?
Is the landlord entitled to a monetary order for damages to the rental unit?
Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is the basement unit in the landlord's detached house. The landlord lives upstairs with her family. A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on August 1, 2019 with rent set at $1,850.00 per month payable on the first day of each month. A security deposit of $925.00 was collected by the landlord which she continues to hold. A condition inspection report was signed by both the landlord and the tenant at the commencement of the tenancy.

The landlord gave the following testimony. The condition inspection report reflects everything was in "good" condition at the commencement of the tenancy. The fridge was brand-new in August of 2019 and a copy of the invoice was provided as evidence.

The landlord testified that her son has allergies to cat and dogs and because of this, the tenants were not allowed to have pets. On May 26th, the tenants texted the landlord advising that they wanted to have a kitten in contravention of the pet restriction. The tenants would be looking for a new place to stay and the tenants advised that the last day of their tenancy would be June 15th. A copy of the text message was provided as evidence. In the message, the tenant writes *"I know it is 9 days short of a 30 day notice but we are hoping you can be understanding in this matter. Half of the months rent will be covered."* The landlord acknowledges receiving the half of June's rent.

The landlord responded to the text advising *"To end the tenancy you have to give us one full month notice which is end of June. But if you guys moving on June 15, 2019, I accept the notice you have given me. I am mentioning here clearly that I don't want any pet as per our contract till the end of this tenancy."*

On June 15th, at 4:47 p.m., the tenant texted the landlord advising she was ready for a "walk through". The landlord attended the rental unit at 5:30 p.m. The landlord testified she does not recall whether the condition inspection report signed at the beginning of the tenancy was brought to "walk through". The landlord testified that she noticed the scratches and dents on the fridge but nonetheless she gave the tenant a cheque for the full amount of the security deposit. The landlord testified she told the tenant not to

deposit the cheque until she and the co-landlord had an opportunity to talk about what to do about the damage to the fridge.

There was damage done to the floors as well, however the landlord acknowledges she only sought the $684.84 for the fridge replacement in her application and abandons her claim for floor damage.

The landlord testified that after the tenants left in the middle of June, the rental unit remained empty until July 1st. The landlord is seeking payment for the remainder of June's rent, as the tenants paid rent until the middle of June. The landlord testified that the fridge has not been repaired or replaced and that the new tenant occupying the rental unit is currently using the fridge with the cosmetic damage.

The tenant gave the following testimony. She understood the landlord agreed to their notice to end tenancy by his text message on May 26th. On the day of the move-out, June 15th, the landlord did not do a formal condition inspection report with the tenant. The landlord did a full "walk-through" of the unit while the tenant was present, starting at the back room, and finishing in the kitchen. At the conclusion of the "walk-through", the landlord gave her a cheque. The co-tenant tried to cash the cheque but it had been already cancelled by the landlords. There was no discussion regarding the landlord's request not to cash it.

No condition inspection report was presented to the tenant for signature on June 15th. The tenant testified that the co-tenant, who she describes as a family friend, installed the fridge back in August of 2019 when the landlord first purchased the fridge for the rental unit. That is when the scratches were sustained to the door and the tenant should not be held responsible for them as it was the landlord's responsibility to install the fridge, not the tenant's. Alternatively, the tenant's counsel submits that the scratches to the fridge door is reasonable wear and tear.

The tenant provided a forwarding address to the landlord on June 18th and the landlord filed for dispute resolution on June 29th.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The tenancy agreement indicates that this was a month to month tenancy, also called a *periodic tenancy* under the *Residential Tenancy Act.* Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

The tenant concedes that the notice to end tenancy provided to the landlord contravened section 45 of the Act however argues that because the landlord accepted the notice, the principle of estoppel applies to the landlord's claim for the remainder of the June rent. Black's Law Dictionary, 6th Edition, states *"estoppel" means that party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and acted accordingly.*

The tenant argues that the landlord didn't express or imply the early departure was unacceptable to the landlord, barring the landlord from seeking the remainder of the June rent by estoppel. I find that the principal of estoppel does not apply in this case. In the tenant's own evidence package, the tenant supplied the landlord's immediate response to the tenant's notice to end tenancy on May 26th. The landlord's text at 6:01 p.m. states*: "to end the tenancy you have to give us one full month notice which is end of June".* I find that the landlord clearly understood the tenant was breaching section 45 of the Act in ending the tenancy with less than one month's notice. There is no concession of the landlord's right to claim the remainder of the June rent. I find the landlord is entitled to compensation for the remainder of rent until June 30, 2020, the

earliest date the tenant could have ended the tenancy in accordance with section 45 of the Act. As rent was set at $1,850.00 per month, the landlord is entitled to a half month's rent, or $925.00 in accordance with section 67 of the Act.

The second part of the landlord's claim is for scratches to the fridge door. The tenant asserts that the scratches to the door happened while the fridge was being assembled by the co-tenant. The tenant argues that the assembly of the fridge was the landlord's responsibility, not the tenant's and the ensuing damage should be borne by the landlord. I accept the tenant's testimony that this is how the damage occurred, however I do not find the tenant should be fully responsible for the cost of the damage.

Turning to the 4-point test, I find that the landlord has established the existence of the damage (point-1), but has not provided sufficient evidence to establish how the damage was the result of a violation of the Act, regulations or tenancy agreement on the part of the tenant (point-2). The landlord seeks full replacement cost for the fridge with cosmetic damage, rather than the cost of having the fridge repaired or compensation for a percentage of the depreciated value of the fridge. I find the landlord has provided insufficient evidence to satisfy me of the value of the damage (point-3) and attempts to mitigate the damage by repairing the cosmetic damage (point-4). The landlord testified that the fridge is still fully functional and that it is currently in use by the subsequent tenants. I dismiss this portion of the landlord's claim.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the filing fee will not be recovered.

The landlord seeks to retain the tenant's security deposit in satisfaction of the monetary order. I note that counsel for the tenant rightfully noted section 36(2) of the Act that stipulates the landlord's failure to complete a formal condition inspection report with the tenant at the conclusion of the tenancy extinguished her right to claim against the security deposit at the end of the tenancy. However pursuant to section 72, if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that it would be reasonable for the landlord to retain the security deposit already in her possession, rather than return the security deposit and provide her with a monetary order to enforce later on.

In accordance with section 72(2), I order the landlord retain the tenant's full security deposit in full satisfaction of the monetary claim.

Item	Amount
Half month's rent for June	$925.00
Less security deposit	($925.00)
Total	**0**

Conclusion

The landlord is to retain the tenant's security deposit in full satisfaction of the claim.

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: November 19, 2020

Residential Tenancy Branch