Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The landlord filed an Application for Dispute Resolution (the "Application") on June 22, 2020 seeking a monetary order to recover the money for unpaid rent and utilities, for monetary loss or other money owed, and for compensation for damage to the rental unit. Additionally, the landlord seeks to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 9, 2020. In the conference call hearing I explained the process and provided the attending parties the opportunity to ask questions.

The landlord and their agent (hereinafter the "landlord") attended the telephone conference call hearing. One of the Respondents so named as a tenant by the landlord on the Application also attended.

The landlord provided that they sent the notice of this hearing to the Respondents via registered mail. There were two packages of evidence sent to the named Respondents. The Respondent in the hearing confirmed they received the packages of evidence prepared by the landlord.

For the named Respondent who did not attend, the landlord provided that they sent registered mail to the forwarding address that individual provided when the tenancy ended. I accept this piece of the landlord's evidence that this was a verified address allowed under section 89 of the *Act*.

For each Respondent, the landlord provided their evidence on USB and DVD. These accompanied the printed documentary evidence prepared in advance by the landlord. The landlord listed each piece of evidence and asked each Respondent to confirm their ability to access the enclosed digital format copies of the evidence. This was by way of letter to each Respondent dated June 23, 2020.

Based on the statements describing disclosure, and the documentary evidence showing proof thereof, I accept the landlord served notice of this hearing and their evidence in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded with one of the parties that the landlord named as a tenant present.

Preliminary Matter

The landlord provided a copy of the tenancy agreement signed by the tenants and landlord on August 20, 2018. One of the Respondents named on the landlord's Application ("MO") for this dispute is a sibling of one of the tenants on the tenancy agreement ("RO"). The tenant RO deceased in April 2020.

The second tenant on the tenancy agreement and named as Respondent by the landlord in their Application – IJ – did not attend the hearing.

The landlord submitted a document entitled 'Assignment of Lease with Consent of Landlord' (the "Assignment Agreement"). This was for the purpose of assigning the lease after the tenant RO passed away. The Assignor is named as the tenant IJ (and the deceased RO); the Assignee is the deceased's sibling, MO.

The Assignment provides the following terms:

- The Assignee agrees to assume all of the obligations and responsibilities of the Assignor under the lease.
- All rents and other charges accrued under the Lease up to [April 28, 2020, the date of the parties signing this document] will be fully paid by the Assignee. The Assignee will also be responsible for assuming and performing all other duties and obligations required under the terms of the Lease after the Effective Date.

IJ and MO signed the document on April 28, 2020. The document shows the landlord's consent: they agree "to the Assignee assuming after April 28, 2020 the payment of rent and performance of all duties and obligations as provided in the Lease."

I have reviewed this document. It shows the permanent transfer of the tenants' rights and obligations under the tenancy agreement to the third party MO. MO effectively becomes the new tenant of the landlord. In effect this passes the liability of the original tenants on to the new tenant MO.

The *Act* section 34 requires that an assignment must have the landlord's consent in writing. I find the assignment agreement clearly bears the landlord's consent to this assignment.

The named Respondent MO attended the hearing and stated they were never a tenant in the unit. They provided that they only signed this document to gain access to the unit to obtain their deceased sibling's personal effects.

In the hearing, the landlord presented that they "came up with this document to protect the landlord." The landlord also provided the following documentary evidence:

- a letter to IJ dated April 28, 2020 wherein the landlord states they researched online and "find that it is possible to transfer [IJ's] tenancy over to [MO]." Further: "I am working on drafting a document that will be acceptable to the landlord for you and [MO] to review and sign if you agree to the terms. . .To be clear, if there is no assignment of the tenancy to [MO] you will be solely liable as outlined in the terms of the current tenancy agreement."
- a letter to MO (file name dated April 21, 2020) in which they state: "Please ensure that [IJ] is notified and in acknowledgement that she is responsible as the active tenant to handle all matters with regards to the existing tenancy on behalf of [RO] in all legal respects."
- an 'Acknowledgement of Receipt' signed by IJ on April 26, 2020 wherein it states: "it is my responsibility to arrange with next of kin for returning of [RO's] belongings and immediate removal of all personal contents within the rental property"
- an 'Acknowledgement of Receipt' signed by MO on April 28, 2020 wherein it states: "Confirmed understanding that as the declared next of kin. . it is the responsibility of [IJ] (remaining active Tenant to the rental property mentioned above) for making appropriate arrangement(s) required to returning of [RO's] belongings and immediate proper . . . removal of all personal contents within the rental property for the commencement of urgent restoration. . .to prevent imminent threat to life and property plus potential increased costs of damage/repairs to the rental property as time goes by."

I find as fact that there are certain elements to this agreement that do not make it a valid assignment as contemplated by the *Act*, making it not in line with the purpose and intent of the legislation. The landlord provided in the hearing that they were the originator of this document – they crafted this document to protect the interests of the landlord. I find this inverts the landlord's consent here; in essence, I find it more likely than not that the landlord crafted this agreement, and then had the parties sign it in their presence. This was not an instance of the parties agreeing to an assignment in advance and *then* requesting the landlord's consent;

rather, the landlord here initiated this contract. I find this runs counter to any arrangement that the *Act* may specify as legally valid.

Further, I find the advance letter to the tenant IJ of April 28, 2020 is advising of legal rights and ramifications. The landlord here instructs the tenant on how to assign liability attached to the original tenancy agreement.

I also consider some necessary elements of any agreement of a contractual nature in order to determine whether the assignment agreement is valid and legally assigns all of the tenant's rights and obligations.

I find an agreement of this nature is only valid where an assignee had the capacity to understand what they were agreeing to. That is, the assignee must completely understand the terms of the agreement.

My finding on this issue is context-specific insofar as the party MO's understanding of the situation was diminished:

- MO signed the 'Acknowledgement of Receipt' at the same meeting on April 28, 2020. This imparted a sense of urgency to the situation in dealing with the immediate need for restoration work to commence after consent for a party's access to the unit was granted by the tenant IJ. This was after a very unfortunate event occurred regarding MO's brother, the deceased RO.
- The 'Acknowledgement of Receipt' signed by MO names the tenant IJ as the "remaining active tenant to the rental property" – I find it plausible that in the situation this was MO's understanding of where the tenancy existed at that time. Strictly speaking, this runs counter to the Assignment Agreement forwarding all rights and obligations to MO exclusively.
- There was a sense of urgency at the meeting given the immediate need for restoration. This was imparted by the landlord to MO in advance by way of the letter on April 21, 2020. Though not amounting to coercive pressure, I find there is an element of duress present that led MO to sign the agreement against their better judgement. There was a heightened sense of urgency here and this document was presented to MO along with the immediate Acknowledgement document they signed to have immediate access to the unit granted appropriately.
- Further, I find the landlord established contact through MO initially (on April 21) and relied on MO to establish a line of communication with the tenant IJ. This also imparted a sense of urgency to the situation. There is no mention in this communication of the

need for an assignment agreement; rather, the immediate need for access is outlined, underlining the importance of immediate contact with the tenant IJ.

- As well, the evidence shows the landlord imparted the knowledge of the Assignment Agreement in advance of meeting IJ; there is no record of this advance notice to MO. The nature of the Assignment Agreement was not brought to MO's attention in advance of the meeting in which they signed the document on April 28, 2020.

As a very important basic element of the agreement, I find as fact that MO was not afforded the opportunity to completely understand the Assignment Agreement. I find it more likely than not the document was introduced at the meeting on April 28, 2020, to have both parties sign, to protect the interests of the landlord.

I find an agreement of this nature is only valid if the assignee MO had capacity to understand what they were agreeing to. That is, the assignee must completely understand the terms of the agreement. In the hearing, MO only stated they did not ever reside in the unit, and their only purpose in attending the meeting on April 28, 2020 was to retrieve RO's personal items. I accept that statement as truthful and genuine.

For the above reasons, I find, for the purposes of the tenancy agreement at the core of this hearing, that the Assignment Agreement is void. MO did not have the ability to understand the terms and nature of the agreement. It is not legally binding and confers no rights or responsibilities to MO.

By section 64 of the *Act*, I amend the landlord's Application here to exclude the deceased tenant's sibling MO. This leaves the tenant IJ (hereinafter the "tenant") as the sole Respondent to the landlord's Application, being the party who signed the original tenancy agreement.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent/utilities, compensation for damage, or other monetary amounts, pursuant to section 67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement. This shows the tenant signed with the landlord on August 20, 2018. The monthly rental amount was $1,600, payable on the 1st of each month. The tenant paid a security deposit of $800. The tenancy was for a fixed term starting September 1, 2018 and ending on August 31, 2019.

After the fixed term, the tenancy continued through to its ending on May 30, 2020. The tenant submitted a notice to end tenancy to the landlord prior to this on April 26, 2020 when they attended a meeting with the landlord. The document reads: “I [tenant] . . .want to end the tenancy on the end of May 31 2020. Because I no longer wish to stay in the unit.”

The landlord submitted there were strata infractions by the tenant prior to a notice to the landlord from the property manager that the other tenant had deceased. The strata put pressure on the landlord to deal with the unfortunate situation immediately based on the need for immediate need for urgent restoration. In the hearing, the landlord reiterated that they had immediate pressure from the strata to rectify the situation, and this was hampered by their inability to contact the tenant IJ.

The landlord makes a three-hold Application for monetary compensation:

1. unpaid rent – May 2020
   This is the May 2020 rent amount, for $1,200. In a letter dated May 23, 2020 to MO, the landlord states this was based on an agreement between the landlord and MO. In this letter they propose they retain the entirety of the security deposit amount of $800. The remaining $400 was to be agreed-upon in monthly installments. The landlord asked for contact back from MO by May 31, 2020. A blank consent form is attached to the letter, showing the proposed consent by MO; however, no signed copy of the consent letter was submitted by the landlord.

2. unpaid rent – June 2020
   The landlord presented on their monetary worksheet that the unit was “unrentable for June". This portion of the claim is for the full amount of June rent at $1,600.

3. loss rental income – July – September 2020

The landlord presented on their Monetary Order Worksheet that the restoration of the unit was unfinished. The landlord amended the worksheet on September 17, 2020 in advance of the hearing. Each month's rent is $1,600 for the total here: $4,800

4. restoration deductible and extra above deductible -- $15,000 total
   The landlord presented this was for trauma scene cleanup within the rental unit. This was due to restoration work by a contracting work who immediately advised of the need for removal of contents and carpeting. At the time of the initial consultation, document on April 17, 2020, the contractors advised of "full painting at minimum." The document states this is "preliminary assessment only" and the "scope of work and estimate will follow shortly."

   This April 17 document also shows the restoration company estimate of $1000 - $5000 – this is "preliminary assessment only". This represents the landlord's claim for $5,000.

   A letter from the strata agent to the landlord on April 20, 2020 advised that "deductible chargeback will be sent to the unit for $10k." This is the landlord's claim for $10,000. The strata agent also advised: "It would be suggested that you contact your personal insurer so that you can pay your personal deductible and your insurer can issue payment in the amount of $10k to the Strata Corporation."

   Further on this, an email dated June 16 to the landlord shows the "quote for additional cost not covered by the insurance deductible" was not yet received. The landlord specified that "basically it would be for the missing kitchen cabinet doors and replacement of the kitchen counter top". There is also listed the need for door replacements, flooring installation, baseboard installation. The landlord specified to the project manager: "Completion date for all work is expected to be around mid-July (August?) soonest."

   The landlord provided photos to show damage within the interior of the unit. These show damages to the doors and walls, countertops and areas of the flooring.

5. mailbox key and key fob replacement, $150 each
   The landlord provided evidence for this in the form of a quote from the customer care lead for the mailbox (at a lock replacement cost of $20 and $119 for "0.5 hr of labor").

   A June 15, 2020 text message from the building caretaker advises: "The cost to replace the fob is 75$ each."

6. Strata Management fines -- $200 and $500
   The landlord presented communication from the strata to the landlord showing a fine levied on June 4, 2020. This is for "a contravention of the Strata Corporation's bylaws." On the amended Monetary Order Worksheet of September 17, 2020, the landlord lists this as "Fine for Trauma Clean Up".

   On their initial Monetary Order Worksheet completed on June 15, 2020, the agent listed a "pet violation fine + cleanup" amount of $500.

7. landlord's agent – cost for extra work $2,044
   The landlord's agent provided a log of their work as an estimate for 140 total, at $14.60 per hour. The log provided shows the agent's work from mid-April through to mid-June. They accounted for a large majority of their time for this work due to the Respondents not being "accountable, responsive and cooperative."

8. landlord distress and anxiety - $100

Without including the $100 cost of the Application filing fee, the landlord's total claim for compensation is $25,744.00.

The tenant did not attend the hearing and did not provide documentary evidence in response to the landlord's claim.

Analysis

From the evidence presented by the landlord I am satisfied that a tenancy agreement was in place. By their cancellation of the tenancy at the end of April 2020, I find the tenant acknowledged and provided tacit confirmation that they were a party to the tenancy agreement. The specific terms for the rental amount and security deposit amount are clear from the agreement provided by the landlord.

I accept the evidence before me that the tenant failed to pay the full amount of rent for May 2020. I find the landlord is entitled to an award of $1,200 as claimed.

Into June, I find there is sufficient evidence to show the unit restoration was not complete at that time. I find the landlord had multiple responsibilities at the end of the tenancy. Their efforts here were hampered by the lack of contact from the tenant. The landlord had to contact the tenant via the deceased tenant's sibling. The evidence from the project manager on

restoration dated June 16, 2020 establishes that work continued through June 2020. Damage to the rental unit is specifically identified by the project manager; I find this draws back to the tenancy, damage repair continuing through to June is the responsibility of the tenant and hampered the landlord's ability to re-rent the unit. I so award the amount of June rent at $1,600 to the landlord.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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 rent amounts owing onwards for the following three months is not established as a damage by the evidence the landlord presented here. The follow-up from the project manager is not accurate in depicting the state of the unit for each of these successive months. Also, the landlord did not establish in the evidence the efforts they made at re-renting the unit or determining an accurate timeline for doing so. Without this evidence, it is not possible for me to make the determination that this results from the tenant's breach through damage to the unit. Further, with reference to the above criteria, I find there is insufficient evidence that shows the landlord took steps to mitigate their damage over this timeframe after the end of the tenancy. The landlord's claim for these successive three months of rent is dismissed.

The landlord's worksheet and accompanying evidence identifies five separate components to their request for compensation: restoration/repair; key replacement; strata violation fines; the agent's work; and the landlord's distress. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

- <u>restoration and repair work:</u>

  With the photos provided, I find the landlord establishes that there was damage within the unit. This legitimately requires compensation as per the *Act* and the terms of the tenancy agreement. I find the landlord made the tenant aware of the need for costs of restoration and repair by April 26, 2020 when the tenant signed the 'Acknowledgement of Receipt' document.

When it comes to establishing an actual claimed amount, the evidence is insufficient. I find the documentation they provided does not establish the actual costs for damage repairs. It appears the costs thereof are in a state of limbo with extant insurance claims being rectified with the strata and communication with the restoration project manager. The communication from the strata dated April 22, 2020 establishes that the landlord is responsible under the Bylaws for amounts incurred by the strata corporation "up to the amount of the insurance deductible of the strata corporation ($10,000)." There is no final cost of damages or costs back to the insurance company to define an actual insurable loss.

The strata asked the landlord for specifics on their insurance amounts and urged the landlord to contact their insurer to begin the process of validating a claim and establishing the deductible amount. There is no record from the landlord that they communicated with the insurer to establish costs or proper deductible amounts. For both the portions of $10,000 and $5,000 as claimed, there is no calculation of true damage amounts that the tenant is obligated to cover. By mid-June, the project manager identified that amounts were still in the process of being calculated, and a contact from the restoration company would contact the landlord with these amounts. The response from the company does not appear in the evidence.

Further, the restoration company prepared a 'Site Visit Report' dated April 17, 2020. This is a very preliminary look at the situation and provides very broad estimates of work cost required. As stated on that document; "The above is a preliminary assessment only and subject to change. A complete emergency services scope of work and estimate will follow shortly." There is no record of a following estimate in the evidence.

In short, the evidence for damage is present in the form of photos and a preliminary inspection; however, an assessment of the value thereof is not. With regard to the above criteria, the value of the damage or loss is not established in the landlord's evidence. For this reason, I dismiss this portion of the landlord's claim.

- <u>missing keys/fobs:</u>

I find the landlord here provides sufficient evidence of mailbox lock replacement (due to missing keys) and replacement of the fobs. The value is established in the evidence, and I find this loss results from the actions of the tenant. I so award the total amount claimed under this category: $300.

- strata violations

  There is evidence the strata informed the landlord of strata violations by way of letter dated April 22, 2020. This sets out the applicable bylaws regarding use of property and the responsibility of owners.

  By June 4, 2020, the strata imposed a penalty of $200. I cannot determine whether the violation is related to the bylaws set out by the strata in their earlier April correspondence. The amount of $200 is not qualified in the Strata bylaws and appears arbitrary in nature. The specific contravention in particular is not named; therefore, I find it is a tenuous connection back to any violation of the tenancy agreement or the *Act* by the tenant. It is not clear whether the fine is connected to the landlord not advising of insurance coverage in a timely manner, or the restoration process causing interruption or other difficulty to the strata or other residents in the building property. The penalty is undefined and for this reason, this portion of the landlord's claim here is dismissed.

  Additionally, the $500 claimed for a pet violation is not established with any evidence. The date of an occurrence, or communication with the Strata on this particular violation is not in the evidence. This portion of the claim is dismissed.

- agent work

  I find the evidence provided by the agent on the amount of work involved points to a substantial amount of work on their part; however, the bulk of the evidence does not show this was the result of the tenant breaching the *Act*. For the purposes of ending the tenancy, the tenant provided contact information, and did attend to provide access to the unit when needed. Though substantial and time-consuming, I find the evidence shows this is properly work undertaken on the landlord's behalf. Without knowing the relationship between the agent and landlord, I find the accumulated time does not result from any breach of the *Act* by the tenant. I find it is a proper discussion to be had between the landlord and the agent. For this reason, I dismiss this portion of the landlord's claim – the tenant is not obligated in this situation to compensate the landlord for this work involved.

- landlord distress and anxiety

  With regard to the four criteria set out above, I am not satisfied that a damage or loss of this nature exists. There are no particulars to this portion of the claim; this is a basic

requirement in an application for dispute resolution, as set out in section 59(2) of the *Act*. I dismiss this portion of the landlord's claim.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $3,100. After setting off the security deposit amount of $800, there is a balance of $2,300. I am authorizing the landlord to keep the security deposit amount and award the balance of $2,300 as compensation for amounts owing as claimed.

As the landlord is partially successful in this application for compensation, I find that the landlord is entitled to recover the $100.00 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $2,400 for compensation set out above and the recovery of the filing fee for this hearing application. 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*.

Dated: November 13, 2020

Residential Tenancy Branch