Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Golden Goals Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) and an Amendment to the Application (the Amendment) that were filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation in the amount of $700.00 for damage caused by the Tenant, their pets or their guests to the unit, site, or property;
- Recovery of $1,495.00 in unpaid rent;
- Compensation in the amount of $3,256.40 for monetary loss or other money owed;
- Recovery of the $100.00 filing fee; and
- Authorization to withhold the Tenant's $750.00 security deposit towards the above noted amounts owed.

The hearing was convened by telephone conference call and was attended by the owner of the company named as the Landlord in the tenancy agreement H.A. (the Landlord), an agent for the Landlord O.A. (the Agent), and the Tenant, all of whom provided affirmed testimony. As the Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and the Amendment, and raised no concerns regarding service or commencement of the hearing as scheduled, the hearing therefore proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence within the service timelines set out in the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I have accepted the documentary evidence before me from both parties for consideration. 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 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 the Application.

Issue(s) to be Decided

Is the Landlord entitled to compensation in the amount of $700.00 for damage caused by the Tenant, their pets or their guests to the unit, site, or property?

Is the Landlord entitled to recovery of $1,495.00 in unpaid rent?

Is the Landlord entitled to compensation in the amount of $3,256.40 for monetary loss or other money owed?

Is the Landlord entitled to recovery of the $100.00 filing fee?

Is the Landlord authorized to withhold the Tenant's $750.00 security deposit, and if not, is the Tenant entitled to the return of all, some, none, or double the amount of the security deposit?

Preliminary Matters

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 Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on September 1, 2019, states that the one year fixed term of the tenancy agreement commenced on September 1, 2019, and was set to end on August 31, 2020. The tenancy agreement states that rent in the amount of $1,495.00 is due on the first day of each month and that a $750.00 security deposit was paid. The tenancy agreement also contains one addendum, signed on September 16, 2016. During the hearing the parties

agreed that these are the correct terms for the tenancy, that the addendum forms part of the tenancy agreement, and that the Landlord still holds the Tenant's $750.00 security deposit in trust.

The parties agreed that the Tenant gave verbal notice on June 23, 2020, to end their fixed term tenancy early effective the end of July 2020, followed by written notice on June 29, 2020. Although the Tenant stated that they ended the tenancy due to safety concerns, harassment, and a breach of a material term, they acknowledged that no written notice of their concerns or their intention to end the tenancy for a breach of a material term was given to the Landlord. Instead, the Tenant stated that they had verbally discussed these issues with the Landlord. In addition to this, the Tenant stated that they thought there was a mutual agreement with the Landlord to end the tenancy early, and pointed to an audio recording in the documentary evidence in support of this position. The Landlord disagreed, stating that although they accepted the Tenant's notice to end their tenancy as they cannot prevent a tenant from leavening or ending a tenancy, accepting a notice to end tenancy is different than mutually agreeing that a tenant can end a fixed-term tenancy early without consequence for breaching the terms of the tenancy agreement.

The parties agreed that a move-in condition inspection and report were completed in compliance with the Act and regulations and that the Tenant received a copy as required. The parties also agreed that the Tenant vacated the rental unit on July 25, 2020, and that no move-out condition inspection was completed, however, they disagreed about why. The Landlord stated that they tried to schedule a move-out condition inspection with the Tenant, but the Tenant was being difficult. They also stated that the Tenant moved out early on July 25, 2020. The Tenant agreed that they moved out early as the 31st was a Friday and they instead chose to move out on the weekend prior. The Tenant disagreed that they were being difficult and argued that although the Landlord proposed a date and time for the inspection, this date and time did not work for them due to their work schedule and as a result, they were told to just leave the keys under a door mat when they moved out. The Tenant stated that they were never provided with a second option or served with a Final Notice to Schedule a Condition Inspection on the approved form as required. Copies of text messages between the parties regarding the move out inspection and where to leave the keys was submitted for my review.

The Landlord agreed that the proper form was not used to offer a second inspection date but reiterated that the Tenant was being difficult and that sufficient opportunities for an inspection had been provided. The Landlord stated that a move-out condition

inspection and report were completed in the Tenant's absence. Although the Landlord stated that a copy of the move-out condition inspection was served on the Tenant as part of the documentary evidence before me, the Tenant denied receipt as part of the evidence package or by any other means.

The Landlord argued that the Tenant did not leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy as required by section 37(2)(a) of the Act. As a result, the Landlord sought $120.00 in cleaning costs and $1,312.50 for the cost of repairing damage to the an entrance door ($472.50), peeling paint on the bathroom ceiling due to the Tenant's failure to properly ventilate the washroom ($262.50), and damage to an exterior fence that the Landlord claims was damaged by the truck the Tenant and/or their friends were using to move the Tenant's belongings out of the rental unit ($577.50). The Landlord stated that contractors at the property and the maintenance person for the property witnessed the Tenant or their friend damage the fence with a truck while the Tenant was moving out and that the Tenant had also damaged the door while moving. The Landlord submitted photographs of the damage and an invoice for repairs in support of their claims.

While the Tenant accepted that they are responsible for $262.50 sought by the Landlord for bathroom ceiling repairs, they denied damaging the entry door or a fence on the property, stating that the damage to the door pre-existed the start of the tenancy and that the fence was already damaged and being repaired by contractors on the day they moved out. The Tenant pointed to a written statement from the driver of the truck used to move out of the rental unit, photographs of that truck, and a statement and photographs from a previous occupant of the rental unit in support of their testimony.

The parties were in agreement that no rent was paid for August 2020 and the Landlord sought recovery of $1,495.00 in lost rent for August. The Landlord stated that the Tenant was not entitled under the tenancy agreement to end their tenancy until the end of the fixed term, August 31, 2020, and that the rental unit was not re-rented until September 1, 2020, despite having been advertised at the same rental rate in July and August. The Tenant disagreed that any amount of rent should be owed for August 2020 as they believe that they either had cause to end the tenancy early under the Act or that there was a mutual agreement with the Landlord to end the tenancy early. The Tenant submitted significant documentation regarding their complaints to the Landlord about the rental unit and their safety concerns as well as audio recordings. The Landlord relied on the Act to support their position that the Tenant was not entitled to end their tenancy early.

The Landlord also stated that the Tenant's partner resided in the rental unit without authorization throughout the entire tenancy and sought $328.90 for the Tenant's unauthorized roommate, which represents a 2% increase in the cost of rent per month for the 11 months of the tenancy. In support of this claim the Landlord pointed to term 6 in the addendum to the tenancy agreement stating that tenants must obtain authorization and approval for any roommate or new resident to live in their unit and that a 2% increase of monthly rent will be charged for additional occupants to compensate for hot water/heat supplied by the building as part of rent. In support of their position that the Tenant's partner resided in the rental unit, they stated that mail was received for them at the rental unit after the Tenant vacated and provided photographs of the outside of several of these envelopes. The Landlord also stated that both the caretaker for the property and contractors hired by the Landlord to complete work on the property have advised them that the Tenant's partner lived in the rental unit.

Although the Tenant acknowledged that their partner stayed with them in the rental unit, they stated that this was only for the month of June as they had broken their leg and were in a wheelchair. The Tenant stated that their partner never resided in the rental unit as their primary residence and in fact, maintained their own accommodation elsewhere where all of their possessions remained. Although the Tenant acknowledged that their partner had mail sent to the rental unit, they stated that this was only because they were waiting for something important and their partner did not want to drive all the way back to their own home just to check the mail, as their partners home is located several communities away. As a result, the Tenant argued that their partner was a guest and not an occupant of the rental unit. In the event that I find they are an occupant, the Tenant argued that they should only be considered an occupant in June, as this is the only month they stayed full-time with the Tenant. The Tenant submitted medical documentation for my review regarding their injury.

The Landlord also sought recovery of the $100.00 filing fee and authorization to withhold the Tenant's $750.00 security deposit towards any amounts owed.

Analysis

As the Tenant agreed in the hearing to the $262.50 in bathroom ceiling repair costs sought by the Landlord, I grant the Landlord recovery of this amount.

Although the Tenant argued that they had grounds to end the tenancy for a breach of material terms of the tenancy agreement, I disagree. Although the Tenant submitted a written account and copies of written correspondence with the Landlord regarding

numerous health and safety complaints as well as a general lack of enjoyment of the property, the Tenant acknowledged during the hearing that they did not serve the Landlord with a breach letter as required by Policy Guideline 8 outlining what breaches to the tenancy agreement were occurring, that they believe that the breaches are to material terms of the tenancy agreement, giving the Landlord a reasonable timeline for addressing their concerns and advising them that they will end the tenancy by a specified date if the concerns are not addressed. Further to this, the Tenant did not provide any testimony during the hearing regarding what terms, if any, of the tenancy agreement are material terms, as set out in Policy Guideline 8. As a result, I am not satisfied that the Tenant either had the right to end the tenancy for breach of a material term, or that they actually did so.

I also do not accept that there was a mutual agreement to end the tenancy early and find that the voice recording and other evidence submitted by the Tenant simply establishes that the Landlord received and accepted their notice to end their tenancy, not that they mutually agreed that the tenancy could end early without consequence to the Tenant for breaching the fixed term set out in the tenancy agreement. Section 45(2) of the Act states that a tenant may end a fixed term 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,
> (b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
> (c)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.

Based on the above, I am satisfied that the Tenant breached section 45(2) of the Act when they ended their tenancy early on July 25, 2020, without any other right under the Act to do so. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the copies of correspondence between the parties regarding showings of the rental unit prior to the end of the tenancy, and the testimony of the parties in the hearing, I am satisfied that the Landlord made reasonable attempts to have the rental

unit re-rented as soon as possible and at a reasonably economic rental rate. I am also satisfied that the rental unit was not re-rented until September 1, 2020, and that the Landlord therefore suffered a loss in the amount of $1,495.00 as August rent was not paid by the Tenant. Pursuant to sections 7 and 26 of the Act and Policy Guideline 3, I find that the Tenant is therefore responsible for paying August 2020 rent in the amount of $1,495.00 and I therefore award the Landlord recovery of this amount.

While there was no dispute between the parties that the door to the rental unit was cracked in one area, they disputed whether or not this damage pre-existed the start of the Tenancy. Although the Landlord argued that it did not and was damaged by the Tenant or their movers at move out, the Tenant submitted documentation establishing numerous issues with the door throughout the tenancy and written correspondence and photographs from the previous occupant showing that the door was already damaged before the start of this tenancy. Although the Landlord questioned the credibility of this evidence on the basis that the previous occupant was evicted, they did not submit any documentary or other evidence to establish that either the information provided by the previous occupant for my review is fraudulent, such as photographs of the door prior to the start of this tenancy or a copy of the move-in condition inspection report showing that the door was not cracked at the start of this tenancy, or any evidence to support their position that the previous occupant is not credible. Further to this, I do not accept the position of the Landlord that a previous tenant's evidence is not credible simply because they were previously evicted. As a result of the above, I find that the Landlord has failed to satisfy me on a balance of probabilities that the damage to the door did not pre-exist the start of this tenancy and I therefore dismiss the Landlords claim for $472.50 in door replacement costs without leave to reapply.

The Landlord also claimed that the Tenant or a person permitted on the property by the Tenant damaged a fence with a truck when the Tenant moved out, resulting in repair costs of $577.50. The Tenant denied that this occurred stating that the fence was already damaged and although the Landlord stated that contractors and the building maintenance person witnessed the Tenant or a person permitted on the property by the Tenant damage the fence, the Landlord neither provided written statements from the contractors or the building maintenance person nor called these parties as witnesses to provide testimony for my consideration. In contrast the Tenant submitted a written statement authored by their friend, who stated that they were the driver of the truck used to move the Tenant's possessions out of the rental unit, stating that neither they, nor the Tenant damaged the fence and that it was in fact, already damaged. They also pointed to photographs of the undamaged truck allegedly used.

As a result, I find that I am not satisfied by the Landlord on a balance of probabilities that the fence was damaged by the Tenant or a person permitted on the residential property by the Tenant and I therefore dismiss the Landlords claim for reimbursement of $577.50 in fence repair costs without leave to reapply.

Although the Landlord submitted numerous photographs of the rental unit allegedly showing that the rental unit was not left reasonably clean at the end of the tenancy, I am not satisfied by the Landlord that this is the case. The quality of a number of the photographs submitted by the Landlord makes it difficult for me to ascertain what the Landlord alleges is shown, such as a dirty floor and shower pan. Other photographs allegedly showing that areas of the rental unit, such as the fridge, are unclean, appear to me to show that the rental unit is in fact reasonably clean. While I acknowledge that several areas, such as window ledges, were not left perfectly clean, the standard is reasonably cleanliness. As stated above, I am not satisfied by the Landlord's documentary evidence that the rental unit was left dirty as alleged by them. Further to this, the Tenant submitted a video of the rental unit at move out wherein the rental unit appears to me to be reasonably clean. Although the Landlord uploaded a document tilted "cleaning invoice", it was actually a PDF of a photograph of mail in the name of the Tenant's partner, not a cleaning invoice. The Landlord also did not submit copies of the condition inspection reports for my review. As a result, I am not satisfied that the Tenant breached section 37(2)(a) of the Act or that the Landlord incurred $120.00 in cleaning expenses as alleged and I therefore dismiss the Landlord's claim for reimbursement of $120.00 in cleaning costs without leave to reapply.

Term 6 of the addendum to the tenancy agreement states that tenants must obtain authorization and approval for any roommate or new resident to live in their unit and that a 2% increase of monthly rent will be charged for additional occupants to compensate for hot water/heat supplied by the building as part of rent.

While I acknowledge that mail for the Tenant's partner was sent to the rental unit, the Tenant provided a reasonable explanation for this and stated that their partner was a temporary visitor as they had broken their leg and required their partner's assistance. Although the Landlord stated that both contractors and the building maintenance person have seen the Tenant's partner frequently and believe them to be an occupant rather than a visitor to the rental unit, the Landlord neither provided written statements from the contractors or the building maintenance person nor called these parties as witnesses during the hearing to provide testimony for my consideration. Based on the above, I find that the Landlord has failed to satisfy me on a balance of probabilities that the Tenant's partner was anything other than a temporary visitor to the rental unit in the

month of June as stated by the Tenant and I therefore dismiss the Landlord's claim for $328.90 in additional rental costs for a roommate without leave to reapply.

Having assessed the Landlords claims for damage, cleaning costs, and lost rent, I will now turn my mind to the matter of the Tenant's security deposit. The parties agreed that the tenancy ended on July 25, 2020, and documentary evidence before me demonstrates that the Tenant sent their forwarding address to the Landlord by email on July 30, 2020. I therefore deem it received three days later on August 2, 2020, in accordance with section 90(d) of the Act as I find that an email inbox is a virtual mailbox and accept, based on the documentary evidence before me from both parties, that they regularly corresponded by email.

Although I agree with the Tenant that the Landlord did not comply with the requirements of the Act and regulations with regards to offer of a second and final opportunity for a move out condition inspection, and therefore find that the Landlord extinguished their right to claim against the security deposit for damage pursuant to section 36(2)(a) of the Act, I find that the Landlord was never the less entitled to file their Application and withhold the security deposit pending the outcome of the Application, as their claim related to cleaning costs and loss of rent in addition to damage. As the Landlord's Application seeking retention of the Tenant's security deposit was filed on August 14, 2020, I find that it was filed in compliance with section 38(1) of the Act and therefore the doubling provision set out under section 38(6) of the Act does not apply.

As the Landlord was successful in at least some of their claims, I award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Based on the above, I am satisfied that the Tenant owes the Landlord $1,857.50 for damage, lost rent, and recovery of the filing fee. Pursuant to section 72(2)(b) of the Act I authorize the Landlord to use the $750.00 security deposit properly retained by them in partial repayment of the above noted amounts owed. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of $1,107.50 for the remaining balance owed to them by the Tenant 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 **$1,107.50**. 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: December 15, 2020

Residential Tenancy Branch