Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on September 11, 2020 seeking compensation for monetary loss and damage to the rental unit caused by the tenants. Additionally, they seek compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 29, 2020. Both parties attended the conference call hearing. In the call I explained the process and provided each attending party the opportunity to ask questions.

Preliminary Matter

The tenants (hereinafter "tenant") raised the concern that pieces of the landlord's evidence were provided to the branch very recently. The landlord provided that they received pieces of the tenant's evidence more recently, approximately one week prior to the scheduled hearing date. The landlord stated that because of this they could not provide a response until very short order – two days – before the hearing. To address this the landlord felt the tenant submission was "not based on truth" and felt the need to respond.

I find the landlord's stated need for response here rests on what the tenant's witness statements are adding to the tenant's response package. In the hearing, the landlord was provided the opportunity to speak to this. In this decision, I weigh all of both parties' relevant evidence accordingly. One of the factors I will consider in weighing witness statements, based on the relationship between the parties, is the timely arrival of this evidence, should I find it is relevant.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for monetary loss, and/or compensation for damage 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, in this section I describe only the evidence and submissions relevant to the issues and findings in this matter.

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the agreement on August 11, 2019. The monthly rental amount was $3,450. The tenant paid a security deposit of $1,725 on August 12, 2019. In the hearing, the tenant verified these terms as correct.

The tenancy started on August 28, 2019 for a fixed term ending August 27, 2020. A term on the agreement provides "the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term."

The tenancy ended on August 27, 2020. The tenant gave notice to the landlord, via email, on July 19, 2020 as shown in their evidence. The landlord initially asked about the correct procedure on notifying of ending a tenancy. After this, the tenant provided a copy of the printed email, bearing both tenant signatures. This is shown in the tenant video, which they stated occurred on July 26.

1. Rental Loss

In their Application, the landlord stated: "Tenant didn't serve me a written notice with signatures to end the tenancy." This is tied to their claim for the "lost 1.5 month" of rent due to the tenant not cooperating with accommodating showings to new potential tenants. Adding to this, the landlord provides that the tenant made disrespectful comments to potential tenants when visits did occur. These actions on the part of the tenant delayed the landlord's process

of securing new tenants in the ideal timeframe; therefore, the landlord claims monetary loss for $3,390. This is a reduced amount from the normal amount of monthly rent, with the landlord securing new tenants in mid-October. The landlord provided a bank etransfer notification from the new tenant to show the tenancy would start in October.

The tenant responded to say they helped with more than ten separate showings, with the first showings beginning from July 22 onwards. Each showing was "2 or 3 families", and this amount heightened the tenant's concerns with sanitization and distancing during an ongoing public health matter.

The tenant also provided an email from a tenant of an adjacent unit that provides: "the new family moved in right away there was no gap from [the rental unit] having someone living there. Another neighbour's statement provides that there were a number of visitors to the unit, for showings, and other tenants moved in for September. The landlord questioned the veracity of this witness statement by drawing upon their bad experiences with the strata.

2. compensation for damage

For this piece the landlord gave the amount $4,531 on their Application. This breaks down into the following pieces:

ITEM	description	$$ amount
a.	cleaning fee	300.00
b.	fridge repair	105.00
c.	wall repair/paint	1,580.00
d.	dryer exam and repair	183.75
e.	new dryer and installation	1,237.31
f.	hard floor repair	850.00
g.	bunk bed damage	250.00
h.	desk damage	25.00
	TOTAL	4,531.06

The parties had the opportunity to speak to each of these portions of the landlord's claim in detail. The landlord provided their testimony and proof of damage in the form of photos and invoices. In response, the tenant provided photos and a description of each item, to compare images captured at the start of the tenancy and at the end. The parties' submissions on each listed item above are as follows:

a. At the end of the tenancy, the tenant informed the landlord they did carpet cleaning, and more comprehensive cleaning around appliances and around the kitchen. The landlord observed in the hearing that the tenant couldn't produce a receipt of the cleaning fees which they allegedly paid.

   The landlord provided that cleaning was not adequate, even though they provided cleaning instructions to the tenant. In their email to the tenant on August 27 they stated: "we have to charge you cleaning fee of $350 to make it clean thoroughly". To action this, the tenant queried to the cleaning company they enlisted, and clarified that the cleaning company's offer to re-clean the unit had no response from the landlord. The company responded to say: moving appliances would possibly lead to injury; some stains at the older unit "have existed for years"; the $350 fee imposed by the landlord is "too expensive for a return cleaning." The cleaning company provided photos to the tenant.

   For the hearing, the tenant provided a copy of a receipt for cleaning ($315) in their evidence. Thirty-two separate photo images were provided by a neighbour, after the tenant's cleaning service completed their job.

   The landlord provided their own various photos from throughout the unit. These capture detail on dirty floors and walls, blinds, kitchen appliances and bathroom fixtures.

b. The landlord stated the tenant enquired on the refrigerator door in the previous year, and the landlord provided instructions on how to close it properly. The tenant maintained the fridge was "aged" and also required "a very giant push to seal." They provided messages from the prior tenants who could exactly recall the age of the refrigerator.

   The landlord provided the part was only $5; however, it required repair for a much greater amount. The tenant captured an internet image of the same part for $9.

c. Regarding damaged walls, both parties submitted a number of images. The tenant provided both start- and end-of-tenancy photos, and specified which images to compare in the hearing, by item number. The tenant maintained that walls, as captured in the images, were needing work only attributable to "wear and tear" and for many of the photos there is no difference between the start of the tenancy and the end of the tenancy.

The landlord's receipt for painting gives detail on each room. These include repair of a cracked wall "near skyline", grease stains in the kitchen, and scratches throughout that required patching to make the walls smooth. The landlord provided a number of photos showing dirty/damaged walls, and wider-scope room photos showing repair work by patching.

d. The operability of the dryer was a topic of discussion at the final move out inspection meeting. According to the landlord, the tenant operated the dryer for the landlord, to show it operated, while asking for their damage deposit back. After the move out, the landlord discovered one small part needed cleaning and this is when they realized the dryer was completely broken. A visiting tech explained it was due to improper using of the dryer, so "the wheel was off a long time ago."

   The tenant provided that the dryer was old and noisy and had been damaged for a long time. For evidence of this they provided a statement of a neighbour who heard it for quite some time prior to the tenant moving in.

   The landlord provided a video of their basic operation of the dryer. On a normal cycle, the sound is percussive, reverberating and loudly echoing. They asked why the tenant did not notify the landlord earlier about the dryer not working very well. The receipt from an inspection shows "Found drum cracked and rollers worn out heavily" and "It's not worth to repair. Recommend replacement."

e. The receipt for the dryer's replacement contains the notation: "CX has existing LG stacked laundry only 5 years old". A new dryer was installed on September 4, 2020.

f. In the hearing, the landlord provided that they did not pay for any work on hardwood floors, and "this is just an estimate." The documented estimate provided shows a "small floor repair" package plan for the $850 amount, this for "deeper scratches and dents". The landlord provided a picture of a Z-shaped angled scratch in the floor – this they found under one of the pieces of furniture.

   The tenant provided their own set of photos, both from move in and move out. They questioned the timing of the landlord's own photo set, where the photos were not taken during the move out inspection meeting.

g. For the bunkbed, the landlord stated they could not really tell how much to provide for an estimated amount. The receipt that they provided is from 2017, which the tenant

pointed out in their submission. On this point, the tenant also provided their move-in and move-out pictures.

h. The landlord provided a photo to show a scratch across the surface of the desk. It was a desk purchased one or two years prior, which was “so cheap” on its initial purchase. The tenant provided their own photos of the same desk surface, with pictures from a different angle.

Analysis

1. landlord’s claim for rental loss

The landlord took issue with the way in which the tenant advised of the end of the tenancy. They assert the initial message via email was not proper notice to vacate. This forms the basis for their claim of a portion of rent, where the notice from the tenant caused a delay to their efforts at re-renting after the end of the tenancy.

The *Act* s. 45(2) sets out that a tenant may end a fixed-term tenancy by giving notice on a date that is “not earlier than one month after the date the landlord receives the notice.” This section also specifies that a notice to end tenancy must comply with s. 52 form and content specifications.

Relevant to a notice coming from a tenant, s. 52 specifies that a notice must be in writing and must: a) be signed and dated by the tenant giving the notice; b) give the address of the rental unit; and c) state the effective date of the notice.

I find the tenant did not breach the requirements of the *Act* by forwarding notice to end tenancy in the way they did. The landlord afforded the tenant the opportunity to rectify and correct the means by which they processed their notice to the landlord. This then took place, as captured on video, on July 26.

I find the landlord certainly knew of the tenant’s intent for two reasons. For one, it was a fixed-term tenancy, thereby raising the landlord’s awareness that an ending was a likely prospect. Secondly, the tenant’s gave notice – albeit in an incomplete form – on July 19, as shown in the evidence. I find it untenable that the landlord did not turn their mind to the need for their efforts at securing new tenants. I find a delay of one week while the landlord awaited a signed paper document from the tenant did not spoil their efforts at marketing to new tenants.

In short, I find there was proper notice from the tenant, within the required timeline as required by the *Act*. The tenant provided that showings to prospective tenants began on July 22. The landlord has not shown how the tenant's method of notifying of ending the tenancy caused difficulty with finding new tenants.

I find there is an unsubstantiated link between the tenant's alleged behaviour and that equating to interference to a degree that it made re-renting the unit more difficult. The tenant provided that there were a number of showings along with way, onwards from July 22. For this piece, I place a higher burden of proof on the landlord for this piece where they are alleging some misconduct.

Given the tenant's concerns about frequency of showings, I find they reasonably accommodated a number of requests for showings and this does not impinge on either party's rights or responsibilities. The evidence shows the tenant proposed weekend showings – I find this is not an outright rejection of showings as the landlord stated on their Application. From the evidence I find respectful communication was present; the tenant was attuned to the landlord's needs here. The scheduling piece does not amount to interference with the landlord's plan for re-renting.

On the tenant's actual conduct with potential new tenants, the evidence from the landlord is not sufficient to show it interfered with a potential new tenancy. That is to say, there is no proof that new tenants outright rejected the space because of the current tenant's conduct or words toward them. This portion of their claim is unfounded.

I find the tenant gave notice to end the tenancy properly. Moreover, they did not interference or otherwise jeopardize the landlord's efforts at showing the unit and securing new tenants. As a result, I dismiss this portion of the landlord's claim for loss of rent. The link between the tenant's action or inaction and securing new tenant's is not establish through the landlord's evidence here.

2. landlord's claim for damages and security deposit

The *Act* s. 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord keys and other means of access.

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.

As set out above, the landlord's worksheet identifies seven separate areas in their claim for damages. To determine the landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

a. For cleaning, I find the tenant has shown they hired a cleaning service to attend to what must only be the standard of keeping the unit "reasonably clean." The cleaners communicated with the tenant when queried on specific details and provided a thorough account.

   At the same time, the landlord has provided ample detail on the finer points of the cleaning job. I find it in line with the 'reasonably clean' standard that these details should be attended to by the tenant who bears that responsibility; however, the landlord did not explain why the cleaners returning was not an option. Further, it does not appear the tenant had the chance to return to the unit to further clean where deemed necessary, e.g., behind or under the appliances.

   I find there was a need for further cleaning as shown in the landlord's photos capturing the finer details. However, I find the landlord did not mitigate - it is unexplained why they did not entertain the offer to have cleaners return to finish up details. For this reason, I make no award for cleaning.

b. I find the reason for damage to the refrigerator door is unexplained in the evidence; however, it is clear that something was wrong with the door. The refrigerator is not old and has not outlived its useful life cycle. I accept the tenant's evidence that they mentioned this to the landlord previously, but the issue otherwise went unresolved; instead there were instructions on how to properly close the door. I find this is not an effort at mitigating damage here: a proper fix would alleviate the need for proper or improper opening of a refrigerator door which normally is a very simple mechanical movement. For this reason, I award no damages for the refrigerator door.

c. For wall repair and paint, I attribute what I see in the evidence to wear and tear. There are no images that show damage that is deliberate or due to careless actions. It is

mostly scruff marks and other incidental scratches. There is no major wall damage that the landlord can attribute to the tenant. For this, there is no compensation.

d. I find the landlord has shown damage to the dryer requiring its replacement. There is no record that the tenant identified an issue with the dryer to the landlord previously. The account of a tenant providing that they heard the noise prior to the tenant's move in is not sufficient to outweigh the evidence that the landlord provided here. I accept the landlord's point that the tenant did not identify difficulty with the dryer previously.

   The video by the landlord clearly shows there is a significant issue with the dryer. It is difficult to recreate that sound level other than in an actual demonstration, which the landlord presents here. This lends credence to the landlord's point that it is odd the tenant did not mention this to the landlord previously. I also accept the landlord's evidence that the tenant was not forthcoming about the dryer's operation at the move-out meeting. The invoice for purchase and replacement reveals that the dryer itself is "only 5 years old" – this tilts the balance of evidence to show that improper use of the dryer can only be the explanation, minus other anomalies that are not presented by the tenant here.

   Further, I find the landlord made the effort to mitigate the damage by having the unit inspected, after they looked at the problem more closely after the tenant's move out. Repair was not an option. For this, I award the cost of the inspection visit, at $183.75, to the landlord.

e. In line with the above, I award the cost of a replacement dryer to the landlord. The unit in place at the start of the tenancy was 5 years old – this is a very short life cycle for a dryer appliance. The tenant did not present they made this issue known to the landlord previously. This portion so awarded is $1,237.25.

f. I find the damage to the floor is not significant. What is shown does not justify an $850 estimate. Moreover, the estimate is non-specific to what is captured in the photo. There is no award for this claimed piece of damage.

g. I find the tenant presented move-in and move-out images that show the incidental scratches to the bed were present at the start of the tenancy. The evidence is not sufficient to establish that what is shown in the landlord's photos came from the tenant.

h. Similar to the above, I find the evidence is not sufficient to establish this singular piece of damage resulted from actions or inactions of the tenant. I find what is shown in the photo is too insignificant to award any costs.

The landlord has properly made a claim to offset the security deposit and has the right to do so. This is applying the amount of the security deposit held by the landlord against an award for compensation. The landlord is holding this amount of $1,725. I order this award amount $1,415 deducted from the security deposit. This leaves $310 that the landlord shall return to the tenant. This is an application of section 72(2)(b) of the *Act*.

Because I find the landlord did not provide sufficient evidence to verify the majority of their claim, I dismiss their request for a return of the Application filing fee.

Conclusion

I provide the tenant a Monetary Order in the amount of $310 for compensation set out above. This is to give effect to my order that the balance of the security deposit be returned.

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 *Act*.

Dated: January 21, 2021

Residential Tenancy Branch