Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDCT, MNSD, FFT
For the landlord: MNRL-S, MNDCL, FFL

Introduction

The tenant filed their Application for Dispute Resolution (the "tenant's Application") on September 23, 2020. They seek monetary compensation, a return of the security deposit, and reimbursement of the filing fee.

The landlord filed their Application for Dispute Resolution (the "landlord's Application") on November 30, 2020. They seek money for unpaid rent, compensation for other money owed, and reimbursement of the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 14, 2021. With both parties in attendance, I explained the process and offered each party the opportunity to ask questions. I provided each party the opportunity to present oral testimony and make submissions during the hearing.

At the outset of the hearing, both parties confirmed their receipt of the evidence prepared by the other. On this basis, the hearing proceeded.

Preliminary Matter

In their submission, the tenant requested a correction to a previous dispute resolution decision, where the Respondent landlord's name was "stated incorrectly" on the decision and monetary order. The tenant claims this happened because of their typo.

The provided evidence to this present hearing to show the landlord's correct legal name.

The *Act* s. 78 enables the Residential Tenancy Branch to correct or clarify a decision or order. There is a separate process for this that relates to each separate file. The Arbitrator who made the prior decision is the individual who is legally bound to make the correction. The tenant may consult with the branch to determine their options on how to proceed with a request for correction.

Issue(s) to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the tenant entitled to a return of the security deposit, pursuant to s. 38 of the *Act*?

Is the tenant entitled to a return of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the landlord entitled to compensation for unpaid rent, pursuant to s. 67 of the *Act*?

Is the landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act?*

Is the landlord entitled to a return of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The parties signed the tenancy agreement on October 12, 2016 for the tenancy that started on November 1, 2016. At the start of the tenancy, the rent amount was set in the agreement at $650 per month payable on the 1st of each month. The tenant paid a security deposit of $650.

The tenant provided in the hearing that the landlord increased the rent from $650 to $700 in September 2018. While the tenant maintains this is an illegal rent increase outside of the fixed rate allowed, the landlord stated the tenant moved into a bigger suite and agreed to pay this amount.

The tenant presented that in April 2020 the landlord requested more rent, increasing the monthly amount to $800 per month. The tenant maintains this was because of the visits of their companion; however, this was only on weekends, at “three times per month during all of [their] stay” in the rental unit.

In the hearing, the tenant they presented the tenancy agreement to the landlord; part of that states ‘tenant allowed to have guests.’ The tenant asked for a re-drafted tenancy agreement showing the increase in rent; however, the landlord replied to them, stating ‘let’s do this informally’. The tenant agreed to pay this extra amount due to their fear of eviction. The tenant stated they felt that “to mitigate was to go along and nor inflate [the issue] . . . to come back at a later time”.

In a written statement, the landlord provides that “. . .after a few time discussions . . . and we agreed he could pay an extra $100 for the girl staying with him no more than three times per month.”

On June 20, 2020 the tenant gave their notice to end the tenancy to the landlord, effective July 31, 2020. The tenant stated they did not pay rent for that final month – they believed the landlord owed one month to them for overpayment of their rent throughout the tenancy, and for the effective return of the security deposit.

The tenant submits that on July 9, the landlord stated: ‘go away, we are locking you out’, and this left 22 days in the tenancy. The landlord removed their belongings on this date, and the tenant stated they “just walked away.”

In response to this, the landlord stated the tenant gave them notice of ending the tenancy on June 20, giving the end date of July 30. The tenant moved out before paying the rent for July and kept the key when they moved out on July 9, 2020.

a) tenant: return of overpaid rent

The tenant claims $2,535 for overpayment of rent from September 1, 2018 to March 31, 2020. This is based on their claim that “the Landlord increasingly varied the amount of rent that [they] felt the tenant should pay.” As above, this started at $650 per month, then increased to $800 by the end of the tenancy.

The tenant provided a schedule showing the amount of $700 per month from September 2018 to October 2018. This amount increases to $800 for each successive

month from November 2018 through to March 2020. These are 19 separate overpayment pieces in total, and the tenant provided a record of the e-transfer for each month. One exception to this is the month of April 2019 when the tenant paid $685. Adding up the overpayments of $150 (16 of them), $50 (2 of them) and $35 (1 of them) gives the total claim of $2,535.

The tenant drew upon their earlier dispute resolution application, from a separate previous hearing. They described the monetary award of August 24, 2020 where the Arbitrator awarded $450 for overpayment for April 1, 2020 to June 30, 2020.

The August 24, 2020 decision, and the accompanying $450 order was suspended. The reason for this was a different Arbitrator's finding that the landlord was not properly informed of the previous hearing that resulted in the August 24, 2020 award. There was a fault in serving the landlord notice of the prior hearing, and the landlord queried this after the first hearing result. This led to the parties reconvening on October 9, 2020.

This reconvened hearing led to a second decision in that matter between the parties, dated October 15, 2020. In dealing with the tenant's claim for overpayment of rent, the Arbitrator applied the principle of the "doctrine of laches." Their finding was that the tenant agreed to pay the additional rent throughout the timeline of April 2020 to June 2020 – this decision stemmed from an assessment of the landlord's credibility based on the evidence presented. The doctrine applied basically considered the "tenant's failure to dispute the rent increase in a timely fashion"; therefore, the Arbitrator dismissed the tenant's claim.

The tenant's submission dated January 15, 2021, prepared for this hearing, does not mention this Arbitrator decision of October 15, 2020. The landlord, in their submission points out that "the Tenant filed this application and tried to delude again"; the landlord reiterated that this claim was dismissed in the previous application.

b) tenant: return of security deposit

The tenant paid a $650 security deposit at the start of the tenancy. They gave their forwarding address to the landlord on August 5, 2020 after the tenancy ended – this letter to the landlord is shown in their evidence. They request double the amount of this security deposit -- $1,300 – because the landlord did not return the security deposit.

In the previous hearing decision of October 15, 2020, the Arbitrator found the landlord initially collected a deposit that exceeded what was allowed. They ordered the landlord

to return the excess of the collected security deposit -- $325 – to the tenant. A monetary order was granted to the tenant for this amount.

c) landlord: unpaid rent

The landlord made their claim for July 2020 unpaid rent. The evidence they present shows their messaging with the tenant right up until the tenant's vacancy on July 9, 2020. At that time they presented options for the tenant to pay that month's rent – this included their use of the full security deposit (as it then was, at $650) plus the tenant paying $150 extra.

Here, the landlord applies to use the security deposit as it exists after the previous October 15, 2020 decision – that is $325. They also claim for the remaining amount at $475 for the total amount owing of $800.

In the hearing the tenant described how they were "locked out" for the last month and did not have the chance to pay that month's rent. In their written submission, they stated: "On July 9, 2020, after the tenant stood [their] ground and declined to pay the monthly extras, the Landlord finally locked the Tenant [out] of the rental unit as promised." The landlord's email to the tenant on July 9, 2020 reads: "You are not allow[ed] to enter my house anymore!"

The communication from the tenant in the days following July 1 is:

- they advised the landlord they "have time [to pay rent] before Jul 9 by law" – though did not reveal what law they referred to
- on July 5th the tenant advised they were "still doing accounting" and instructed the landlord to "please consider deposit overpayment ($300) as partial payment for this July"
- on July 7th the tenant stated "There is no new information. I am still doing accounting. I will come and pay tomorrow."
- they did not respond to the landlord's text messages on July 8th
- on July 9th, the landlord offered to "clean and fix the damage without charge [to the tenant]" – they also offered to retain the (as it existed then) damage deposit amount of $650, requesting the tenant to pay the remaining $650
- the tenant responded to say: "Please stop calling, texting and messaging me many times a day for many days. There is no new information from my side for you at this time."
- that same day the tenant requested to sub-let the unit which the landlord denied

- the landlord requested the key back from the tenant, based on the tenant already vacating the unit
- that same day, a co-tenant together with the landlord confirmed the tenant moved out their personal belongings and “there are no personal stuff left in the room.”

The landlord went ahead and changed the door keys to the unit, which means the tenant could not enter from that point onwards. The tenant’s submission on this point is that they were “locked out/evicted”.

d) landlord: compensation for monetary loss

The remainder of the landlord’s claim is for the following:

i. $100 for vacuuming and cleaning the room and common area
ii. $16.60 for replacing the door keys
iii. $58.50 for filing the review consideration fee after the initial dispute resolution hearing
iv. $1 for “breaching the agreement”.

The landlord presented a document dated July 9, 2020, signed by a co-tenant. It lists: garbage bin full in the washroom; an unclean refrigerator; and the “cabinets didn’t clean”. They attached 11 photos to show this.

Analysis

Under the *Act* s. 7, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss, 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.

a) tenant: return of overpaid rent

I find the tenant did not challenge what they allege was a rent increase from the landlord at the time it was implemented. I find their explanation on why that did not happen does not illustrate an effort at mitigation.

With reference to the four points of consideration above, I find the tenant has not explained why they left the issue in abeyance as long as they did. Moreover, they alleged there were two rent increase over time, yet on neither occasion did they formally challenge this. They do provide that they "presented the original copy of the Contract and printed excerpts from the Residential Tenancy Regulation" to the landlord; however, there is no reason why they did not take it further at that time and formally challenge if they did not agree or find the amounts to be legally valid. In the hearing, the tenant stated they "left to mitigate was to go along and not inflate, to come back to [this issue] at a later time." This is not an application of the principle of mitigation.

To reiterate, the *Act* s. 7 provides that the party who requests compensation "must do whatever is reasonable to minimize the damage or loss." If the issue was as prevalent as the tenant claims, they had legal recourse to pursue rectification of the issue. This does not represent minimizing the damage when the tenant makes a claim for compensation after ongoing 19 additional months of the tenancy.

On this basis I make no award for the tenant's claim amount of $2,535. This portion of the tenant's claim is dismissed without leave to re-apply. Though they drew upon the August 2020 of an Arbitrator who awarded $450 for the tenant's similar claim, that decision did not stand on rehearing and there was no award.

b) tenant: return of security deposit

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The total amount of the deposit in question here is $325. The prior Arbitrator made the finding that the landlord collected too much and provided a monetary order to the tenant for the extra amount which was $325. Therefore, that amount does not enter into the equation here and the amount of the security deposit initially collected by the landlord has been rectified.

The previous Arbitrator also found the tenant made their claim for return of the deposit prior to the tenancy ending. This was when the tenant initially applied for dispute resolution on July 13, 2020 before the tenancy ended on July 31, 2020. The Arbitrator allowed the landlord to make a claim against the security deposit – this resulted in the landlord filing their claim here on November 30, 2020.

The important dates, with reference to s. 38(1), are July 31, 2020 as the end of tenancy, and August 5, 2020 when the tenant gave their forwarding address to the landlord by letter. The landlord did not return the deposit or make a claim against it within 15 days of that later date, August 5, 2020. Subsequently, the previous Arbitrator in the prior dispute resolution proceeding between these parties allowed the landlord to make their claim against the security deposit.

That decision was on October 15, 2020. The landlord did not file their claim against the security deposit until November 30, 2020. This is quite some time after they received authorization to make a claim from the previous Arbitrator. I find the landlord making their claim at this later stage – without sufficient explanation to account for the delay – is not in keeping with the purpose and intent of the legislation here. In s. 38, the timeline specified is 15 days – I find this timeline is in place to give the parties a measure of expediency in concluding matters between a landlord and tenant. By delaying here, the landlord has prolonged the process, and this is not in line with the principle of mitigation as set out in the four-part test set out above.

With the October 15, 2020 decision, two factors were set in place: the amount of the deposit, and approval for the landlord to make a claim against that amount. The previous Arbitrator decision even sets out that “the landlord filed evidence to support her claim for damages against the security deposit.” The Arbitrator was precluded from deciding on that claim due to the tenant’s objection.

I find it more likely than not the landlord had their claim already established at the time of the prior hearing in October 2020. They did not cross their Application here to that of the tenant, and thereby formally apply, until November 30, 2020. Applying the similar rationale in place in the legislation providing for 15 days, I find the landlord has not made their claim against the security deposit in a manner consistent with that provision. They did not bring their Application as soon as practicable under the circumstances. I therefore find the landlord is accountable for double the amount of the deposit: they did not comply within a reasonable amount of time after receiving approval to make their claim.

For these reasons, I award the tenant double the amount of security deposit in place. This amount is $650.

c) landlord: unpaid rent

Given the tenant's June 20 end-of-tenancy notice, I find the proper end-of-tenancy date was July 31. This is the date specified by the tenant in their note to the landlord.

After this, the tenant did not pay rent on July 1. The tenant made the submission that they did not have the chance to pay for this final month. In their written statement, they provided that "after the Tenant stood his ground and declined to pay the month extras, the Landlord finally locked the Tenant out of the rental unit."

The *Act* s. 26 sets out the tenant's duty to pay rent:

> 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.

Additionally, s. 21 provides that: "Unless the landlord gives written consent, a tenant must not apply a security deposit or pet damage deposit as rent."

I find there was no consent from the landlord for the tenant to apply any security deposit amount toward the payment of rent. As well, from the sequence of messages between the parties, I find the tenant was not clear in when they would pay for the final month of rent and shunned the landlord's requests for information. If the tenant intended for the landlord to use the security deposit amount toward rent, they were not clear in that request; moreover, they are not legally permitted to do so without the landlord's written consent.

I find the tenant was afforded the opportunity to pay the final month rent amount. The tenancy did not end until July 31, despite the tenant being out of the unit by July 9. The tenant was obligated – as per s. 26 – to pay rent for that month. They failed to make that payment despite the landlord's repeated requests for them to do so.

Here the landlord acknowledged they changed the locks to the unit. This was for what the landlord deemed to be safety purposes after they requested the tenant return the key. This consideration of the landlord changing the locks is immaterial to my consideration here; rather, my determination is based on the tenant's obligation to pay rent. The landlord did not prevent the tenant's own access to their personal property at any time. I find it reasonable for the landlord to have considered the unit vacant from that time on, with the tenant having moved out.

For the above reasons, the tenant is responsible for paying the final month of July rent to the landlord. I find the agreement was in place between the landlord and tenant for the rent amount of $800. I award the landlord this amount for the final month of rent.

d) landlord: compensation for monetary loss

For the remaining portions of the landlord's monetary claim, I award only the reimbursement of the $50 review consideration fee. This was based on their legitimate right to be heard in the previous hearing. They were precluded from doing so by not being served in proper fashion the notice of that hearing. Though the tenant explained this as an error of omission, I find the landlord endured significant time and effort to rectify the error and had to pursue the only legal remedy available for them to do so, at the cost of $50.

The landlord provided photos showing the state of the unit after the tenant left; however, they have not established the value of this amount in terms of time or other costs to ensure cleaning was completed. Minus this proof, there is no award for this amount.

The receipt the landlord provided for "replacing the door keys" shows only one single item, that of a "patio door L". I am not satisfied this receipt refers to keys; nor does it show replacement of any more than one item where the landlord specified key<u>s</u> (plural) in their claim. There is no award for this portion of the landlord's claim.

The landlord claimed $1 for "breaching the agreement". In their monetary order worksheet, they provided that this was based on the decision of the prior dispute resolution. There is no award here for a matter that was closed in a previous file, and

the landlord did not explain the legal basis for this $1 claim. There is no award for this amount.

In sum, the tenant is entitled to double the amount of the security deposit amount – this is $650. The landlord is entitled to the July rent amount – this is $800. I offset one award against the other and award the landlord the $150 balance. The landlord is also entitled to $50 as recompense for the fee they paid after the previous decision review consideration.

Because the landlord and tenant were each successful in their claim, I award $50 each for partial reimbursement of their Application filing fees.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $200, as the balance for rent owed, recovery of the review consideration filing fee, and partial recovery of this Application filing fee. This is offsetting the total amount awarded to the tenant.

I provide the landlord with this Order in the above terms and they must serve the tenant 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 *Act*.

Dated: February 16, 2021

Residential Tenancy Branch