Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with a landlord's application for monetary compensation for unpaid or loss of rent; damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to make deductions or retain the tenant's security deposit and pet damage deposit.

At the outset of the hearing, I confirmed the tenant was in receipt of the landlord's hearing materials, including Amendment, and the landlord received the tenant's evidence. Accordingly, I admitted the parties' respective materials and considered them in making this decision.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recovery of the amounts claimed against the tenant, as amended?
2. Is the landlord authorized to make deductions or retain the tenant's security deposited and pet damage deposit?
3. Award of the filing fee.
4. Disposition of the security deposit and pet damage deposit.

Background and Evidence

The tenancy started on December 1, 2019 and the landlord collected a security deposit of $675.00 and a pet damage deposit of $50.00. The tenant was required to pay rent of $1350.00 on the first day of every month.

The landlord and the tenant participated in a move-in inspection together and a move-in inspection report was prepared and initialled by both parties.

For the month of September 2020, the landlord reduced the tenant's rent obligation by 50% to $675.00 due the renovations that were going to be undertaken.

On September 8, 2020, the tenant gave the landlord notice of her intention to vacate the rental unit orally followed by an email sent to the landlord on September 10, 2020. The email indicates the tenant would be vacating on October 1, 2020. The landlord acknowledged receipt of the emailed notice by way of a return email that stated "Received. Thank you." The parties then executed a Mutual Agreement to End Tenancy on September 10, 2020 with an effective date of October 1, 2020.

The tenant vacated the rental unit on September 29, 2020 and returned the keys to the landlord on September 30, 2020.

The landlord did not invite the tenant to participate in a move-out inspection with her and proceeded to complete a move-out inspection report without the tenant present on October 1, 2020.

Below, I have summarized the landlord's claims against the tenant and the tenant's Reponses.

Damage -- $200.00

The landlord submitted that the tenant had two rabbits in the rental unit and there were bite marks and scratches on the inside of the bedroom door and door frame. The landlord provided a photograph of the damage. The landlord obtained a quote to have the damage repaired by the contractor who was installing the new floors and baseboards in the unit. The landlord quote indicates the charge would be $200.00 plus tax. The landlord testified that she paid the contractor $200.00 for this work by e-transfer.

The tenant conceded that it is possible her rabbit(s) caused the damage but suggested that the damage may have been pre-existing since the move-in inspection was not done very thoroughly. The tenant also stated that the landlord never pointed out the damage to the tenant even though the landlord had been in the unit a number of times near the end of the tenancy while the renovations were underway and flooring and baseboards were part of the renovation. The tenant also stated that the contractor is a family friend of the landlord so the estimate of $200.00 is not reliable.

The landlord responded by stating that she was replacing the floors and baseboards but the damage is to the door and door frame casing so this cost extra to repair. The landlord described the relationship with the contractor as being a person with whom she had a prior business transaction with but not a family friend.

Loss of rent -- $391.00

The landlord claims the unit was not re-rented unit October 9, 2020 and she seeks recovery of 8 days of loss of rent from the tenant.

The landlord submitted evidence showing she posted the unit for rent starting September 8, 2020 but I am unable to see the date the unit was advertised as being available for the incoming tenant or the date the subsequent tenancy commenced. The tenant submitted in her written evidence emails exchanged with the landlord including the assertion that the unit was re-rented for October 1, 2020 and there was no loss of rent.

The landlord's reasons for making this claim varied. On the original Application for Dispute Resolution, the landlord submitted the reason for this claim was due to the tenant not giving one full month of notice to end the tenancy. In serving the Amendment, the landlord had identified the reason for the claim as being due to a dishwasher leak that the tenant did not notify the landlord about and the water being shut off for several days.

The landlord provided evidence showing the replacement of the dishwasher on October 8, 2020. The landlord also provided evidence that she e-transferred funds to a person that she claims is the incoming tenant but the date, the amount, and the reason for the e-transfer was not provided in the documentary evidence submitted. Nor, is a copy of the tenancy agreement for the incoming tenant or any correspondence with the incoming tenant to demonstrate the incoming tenant was compensated and if so, the reason and the amount.

During the hearing, the landlord acknowledged that the dishwasher malfunction was not the tenant's fault but the landlord testified that the water had to be shut off for 8 days so as to avoid an undetected flood since nobody was living in the unit after the tenant vacated. The landlord did not elaborate on the reason nobody was living in the rental unit in the days following the tenant moving out.

The landlord also submitted during the hearing that the claim for loss of rent as being due to the tenant giving short notice to end tenancy on September 8, 2020. The landlord acknowledged that upon receiving the tenant's notice to end tenancy she did not put the tenant on notice that she would hold the tenant responsible for any rent or loss of rent for October 2020 due to the timing of the tenant's notice. Nor, is there any indication on the Mutual Agreement to End Tenancy signed by the parties that the tenant would be liable for rent after the tenancy ended. The landlord explained that she was of the view that to say less was better as the tenancy relationship had deteriorated already because the landlord had commenced renovations and the tenant had complained of the disturbances. When the tenancy ended the renovations were still underway.

Strata fine -- $200.00

The landlord submitted that the strata corporation fined the landlord $200.00 because the by-laws governing the moving procedures (notifying the strata corporation, booking the elevator, etc.) were not undertaken for the move out that took place on September 29, 2020. The landlord produced a letter issued by the strata corporation in support of the claim.

The landlord testified that she had booked the elevator for October 1, 2020 based on the tenant's notice to end tenancy. In doing so, the landlord acknowledged that it was the landlord's obligation to notify the strata corporations of the anticipated move-out.

The tenant responded that after sending the notice to end tenancy to the landlord she informed the landlord on September 23, 2020 that she would be moving out earlier: on September 29, 2020. The tenant pointed to a text message exchange between the parties on September 23, 2020 and her cell phone log showing telephone calls with the landlord.

Below, is an excerpt of the text messages exchanged on September 23, 2020:

[Landlord's text is on the left; tenant's text on the right hand side]

I noted that the text message exchange appears to show the landlord was aware the tenant was moving out on September 29, 2020. The landlord responded that September 29, 2020 was only a tentative date and she expected further communication from the tenant. I instructed the landlord to read the text messages that were exchanged after the last one seen above.

The landlord's subsequent text was that one tradesperson would be there on the 29th and that she would reschedule the other one. The tenant response to that was "ok".

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Damage

The parties completed a condition inspection report at the start of the tenancy and the condition of the door and trim in the bedroom is denoted as being in good condition.

The landlord took photographs of the bedroom door and door frame trim after the tenant vacated and provided an estimate in support of her position that the door and trim was damaged during the tenancy in what appears to be scratches and chewing by the tenant's rabbit(s).

The tenant questioned whether the damage occurred during the tenancy by stating the landlord did not say anything when the landlord was in the rental unit just prior to the end of the tenancy and alleging the move-in inspection report was not done very thoroughly.

Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition of the rental unit in a dispute resolution proceeding unless there is preponderance of evidence to the contrary. The move-in inspection was performed by both parties and the report was completed by both parties. I find the tenant's statements that the move-in inspection report was not thorough after the tenancy ended and the landlord made a claim against the tenant for damage to amount to a "preponderance of evidence" to contradict the move-in inspection report. Therefore, I find the move-in inspection report is the best evidence as to the condition of the rental unit at the start of the tenancy and I find the door and the trim in the bedroom was in good condition at the start of the tenancy.

The landlord failed to meet her obligation to invite the tenant to participate in the move-out inspection with her and complete the move-out inspection report together, as is required under section 35 of the Act. Accordingly, I find the move-out inspection report was not prepared in accordance with the Act or Regulations and it is not the best evidence of the condition of the rental unit at the end of the tenancy. Rather, I consider the move-out inspection report along with other evidence. The landlord provided photographs and a quote in an effort to show damage was present at the end of the tenancy and I find that all three pieces of evidence are consistent and satisfy me that the bedroom door and door frame trim was damaged at the end of the tenancy. I further

find the landlord's position that the damage was likely from the tenant's pet rabbit(s) to be reasonable and likely given the height of the damage being close to the floor and there is no other plausible explanation offered to me as to the cause of the damage. Therefore, I find the tenant is responsible for the damage to the bedroom door and the door frame trim.

The landlord put forth an estimate of $200.00 plus tax to repair the damage. The tenant questioned the veracity of the quotation, claiming is was provided by a friend of the landlord. The landlord denied that the contractor was a friend but acknowledged a prior business transaction with the contractor. The tenant did not provide any quotations that would point to the amount being unreasonably high. Upon review of the damage seen in the photographs, I find the door frame trim is significantly damaged and I am of the view that the $200.00 claimed by the landlord is within the realm of reasonableness. Therefore, I grant the landlord's request for compensation for damage in the amount of $200.00 and I order the tenant to compensate the landlord that amount.

Loss of rent

The landlord's basis for this claim was varied and not overly clear and supported, as seen below.

The landlord had put forth a leaking dishwasher more so in her written claim; but focused on the tenant's short notice to end tenancy during the hearing.

As for the alleged "short notice" as being a basis to recover loss of rent, I reject this position. While the tenant had communicated her intention to end the tenancy by way of a phone call of September 8, 2020 and an email of September 10, 2020 the parties actually executed a Mutual Agreement to End Tenancy on September 10, 2020 agreeing, mutually, to end the tenancy effective October 1, 2020. Therefore, I find the tenancy came to an end pursuant to a mutual agreement to end tenancy and not due to the tenant's "short notice".

The Mutual Agreement to End Tenancy is silent with respect to the tenant paying rent for any portion of October 2020 even though the tenancy was set to end October 1, 2020 and the monthly rent was payable on the first day of every month. The landlord also acknowledged that she did not put the tenant on notice that she would hold the tenant responsible for paying any rent for October 2020 in receiving the tenant's notice or executing the Mutual Agreement to End Tenancy. In these circumstances, I am unsatisfied that there was an expectation that the tenant would pay rent on October 1,

2020 or if there was, the amount she would pay for the tenancy being set to end one day into the rental month.

As for the landlord's position that the loss of rent was due to the dishwasher leaking and the tenant did not notify the landlord of this, I find there is insufficient evidence in support of that claim against the tenant. The landlord demonstrated by way of documentary evidence that a new dishwasher was delivered on October 8, 2020 but the landlord acknowledged the malfunctioning dishwasher was not attributable to the tenant. Rather, the landlord points to the water being shut off for several days while awaiting the replacement dishwasher.

I heard the landlord and her contractor were in the rental unit numerous times during the month of September 2020 replacing flooring and baseboards; yet, they did not detect a leaking dishwasher. I note the landlord did not provide a photograph to show where the water was leaking from so that I may determine that it ought to have been noticeable by the tenant.

The landlord stated during the hearing that the water was shut off because there was nobody living in the rental unit; however, the reason nobody was living in the rental unit for several days after the tenancy ended, and considering there were still renovations taking place when the tenant left, was not sufficiently shown to be attributable to the tenant. Further, if the landlord compensated the incoming tenant and seeks to hold the tenant responsible for that, I would expect to see documentary evidence that would show the compensation paid to the incoming tenant and the reason for the compensation such as: a copy of the tenancy agreement for the incoming tenant, the correspondence with the incoming tenant that reveals the reason for the compensation, and a document supporting the amount of the payment. These things were not provided by the landlord and I find I am unsatisfied the landlord has demonstrated the tenant is responsible for the loss of rent claimed, if there was such a loss.

For all of the reasons provided above, I dismiss the landlord's claim for loss of rent from the tenant.

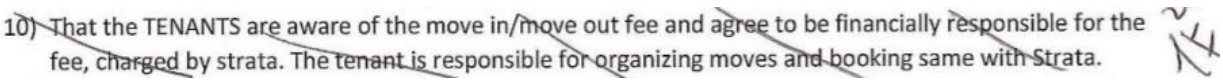
Strata fine

The landlord seeks to recover the cost of a $200.00 fine imposed by the strata corporation for the failure to notify the strata corporation of the tenant's move-out on September 29, 2020. The landlord produced a letter from the strata corporation that supports the landlord was charged, as claimed.

Section 7 of the Residential Tenancy Regulation provides that a landlord may charge a tenant certain fees, including:

> (f)a move-in or move-out fee charged by a strata corporation to the landlord;

The tenant pointed out that in the tenancy agreement addendum, the landlord waived entitlement to charge the tenant a move-in or move-out fee charged by the strata corporation to the landlord by way of the parties intentionally striking through the term, and initialling the modification, as seen below:


10) That the TENANTS are aware of the move in/move out fee and agree to be financially responsible for the fee, charged by strata. The tenant is responsible for organizing moves and booking same with Strata.

Based on the addendum, I accept the tenant's position that the landlord may not charge the tenant for a move-in/move-out fee charged by the strata. However, I find the nature of the claim is not a move-in or move-out "fee". Rather, it is a fine for breach of the by-law requiring the strata corporation to be notified in advance of the anticipated move-out.

A landlord may recover a by-law fine from a tenant as damages or loss if the tenant breached a strata by-law. It was uncontested that the tenant had been provided with a copy of the by-laws and the issue for me to determine is whether the tenant is responsible for breaching the strata by-law.

In term 10 of the addendum, as reproduced above, the requirement for the tenant to organize the moves and booking same with the strata was removed by way of the modification initialled by both parties. The landlord testified that she had booked the move-out date of October 1, 2020 with the strata corporation. Therefore, given the elimination of the tenant's obligation to notify the strata of a move and the landlord's actions in booking the move-out for October 1, 2020, I find it is clear the parties understood that it was the landlord's obligation to book the move-out date with the strata corporation.

The actual move-out date occurred on September 29, 2020 and the strata had not been notified the move-out would take place on that date, resulting in the fine. Since the landlord had the burden to book the move-out date with the strata corporation, to avoid incurring a fine, I find it reasonable to require the tenant to give the landlord notification of the date of her move-out.

Undisputedly, the tenant had originally notified the landlord that she would be moving out on October 1, 2020 by way of the email dated September 10, 2020 that resulted in the parties executing a Mutual Agreement to End Tenancy the same date.

The tenant put forth evidence that she changed the move-out date to September 29, 2020 and notified the landlord of this by way of a text message exchanges and a phone call with the landlord on September 23, 2020. Upon consideration of the text message exchange, I find I am satisfied the landlord was notified the move-out would be taking place on September 29, 2020. The landlord claims the communication from the tenant was in keeping with a tentative move-out date of September 29, 2020; however, I reject that position and I find a reasonable person would not view it as tentative especially considering the landlord actually stated in her text messages: "9 am. During your leaving" in reference to renovation work taking place on September 29, 2020 and when the tenant raised concern over tradespersons being in her way the landlord responded that she would reschedule one of them to which the tenant responded "ok".

In light of the above, I find it was the landlord's obligation to follow through and notify the strata corporation of the change in the move-out date to September 29, 2020 and her failure to do so resulted in the fine and for her failure she must bear the expense. Therefore, I dismiss the landlord's claim for recovery of the strata fine from the tenant.

Filing fee, security deposit, pet damage deposit and Monetary Order

The landlord was successful in 1 of the 3 claims she made against the tenant. Accordingly, I award the landlord recovery of 1/3 of the $100.00 filing fee she paid for this Application for Dispute Resolution and I order the tenant to compensate the landlord $33.00 (rounded to the nearest dollar) toward the filing fee.

The landlord extinguished her right to make a claim against the security deposit and pet damage deposit for damage in failing to invite the tenant to participate in the move-out inspection, as provided under section 36 of the Act; however, the landlord did no lose the right to seek compensation against the tenant for damage for which the tenant is responsible. Section 72(2)(b) of the Act provides that I have the authority to offset amounts payable to each other, as follows:

> (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
>
> (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

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In keeping with all of my findings and awards above, the landlord owes the tenant $675.00 and $50.00 for the security deposit and pet damage deposit but the tenant owes the landlord $200.00 for damage and $33.00 toward the filing fee. In keeping with section 72(2)(b), I authorize the landlord to deduct the sum of $233.00 from the tenant's deposits and I order the landlord to return the net balance of $492.00 to the tenant without delay.

In keeping with Residential Tenancy Branch Policy Guideline 17: *Security Deposit and Set-Off*, I provide the tenant with a Monetary Order in the amount of $492.00 to ensure payment is made by the landlord.

Conclusion

The landlord has been awarded the sum of $233.00 and is authorized to deduct this sum from the tenant's deposits. The balance of the landlord's claims against the tenant are dismissed without leave to reapply.

The landlord is ordered to return the balance of the tenant's deposits in the net amount of $492.00 to the tenant without delay. The tenant is provided a Monetary Order in the amount of $492.00 to ensure payment is made.

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: February 3, 2021

Residential Tenancy Branch