Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL-S, MNDL-S / MNSD, MNDCT, FFT

Introduction

On August 21, 2020, the Landlord submitted an Application for Dispute Resolution under the Residential Tenancy Act (the "Act") to request a Monetary Order for unpaid rent, damages to the rental unit, and for compensation.

On September 2, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit, for compensation, and to be compensated for the cost of the filing fee. The Tenants' Application was crossed with the Landlord's Application and the matter was set for a participatory hearing via conference call.

On November 30, 2020, the Landlord and the Tenants attended the conference call hearing, and both requested that these matters be adjourned as they had not properly exchanged evidence.

At the reconvened hearing on February 22, 2021, the Landlord and the Tenants attended the conference call hearing. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matters

In order to be given a fair opportunity for both parties to present their own case and to answer the opposing side's position, the service of evidence is of great importance.

In this dispute, the Landlord gave oral and documentary evidence that the Landlord's evidence was sent via registered mail on February 3, 2021, and the Tenants acknowledged that they received it.

The Tenants provided oral evidence that they provided their evidence package to the Landlord on February 1, 2021, via registered mail, and the Landlord acknowledged that she received it. The Landlord, however, stated that she was unable to open the USB stick that was included with the evidence package.

In response to how the Landlord would like to proceed as a result of being unable to view some of the documents the Tenants had submitted as evidence, the Landlord stated that she would like to proceed with the hearing. Furthermore, she agreed that she would voice any concerns about the reference and admissibility of certain evidence if required.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 of the Act?

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenants receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. Unless otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy was to begin on April 1, 2020; however, the Tenants moved in on March 29, 2020. The rent was $2,130.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of $1,065.00. The parties lived in the same residential property, in separate units.

The Landlord submitted two pages of the Condition Inspection Report. The Landlord testified that a move-in inspection was conducted on March 29, 2020 with the Tenants and that the condition of the rental unit was noted. The Landlord acknowledged that there were no signatures acknowledging the move-in condition of the rental unit.

The Landlord stated that she had had some difficulties with the Tenants and applied for an early end of tenancy in April 2020. The Landlord attended the hearing on April 27, 2020; however, the Tenants did not attend the hearing. As a result of the Landlord's application, she received an Order of Possession for the rental unit.

The Landlord stated that she provided several dates for the Tenants to attend a move-out inspection via email, and also served a Notice of Final Opportunity to Schedule a Condition Inspection for May 2, 2020, by leaving it at the rental unit. The Tenants did not attend the move-out inspection on May 2, 2020 and the Landlord took over occupancy of the rental unit.

The Landlord stated that the Tenants abandoned the rental unit and that she was unable to find new tenants for the rental unit until the middle of June 2020. The Landlord is claiming a loss of rental income for May and the first half of June 2020, in the amount of $3,195.00.

The Landlord testified that she did not want to use a rental management company to find new tenants; therefore, attempted to find new tenants through "word of mouth" and Facebook.

The Landlord stated that when she conducted the move-out inspection report without the Tenants, she noted that the kitchen faucet was broken. The Landlord provided a receipt for a new faucet and is claiming compensation in the amount of $51.99. The Landlord did not submit any pictures of the broken faucet.

The Landlord stated that the Tenants failed to return the key to the rental unit, therefore, she had to replace the deadbolt assembly. The Landlord submitted a receipt for $35.99.

The Landlord testified that the rental unit was dirty and had to be cleaned. The Landlord submitted a receipt for cleaning supplies in the amount of $9.86. The Landlord did not submit any pictures of the condition of the rental unit.

The Tenants testified that the Landlord had added conditions to the tenancy (First Warning Letter, dated April 1, 2020), and had threatened them with eviction and civil action within a few days of moving into the rental unit. The Tenants stated that they sent a text message to the Landlord on April 3, 2020 advising her that they had vacated the rental unit. The Tenants stated that they had used text messages to communicate with the Landlord about the tenancy issues for the week prior. They did not receive a response from the Landlord.

The Tenants stated that the Landlord was emotional during the move-in condition report and that the inspection was rushed. They said that they noticed the kitchen faucet required repair within the first couple of days of their tenancy and advised the Landlord of that fact. The Tenants testified that they did not break the faucet, were not given an opportunity to sign the move-in inspection report, nor did they receive a copy of the report.

The Tenants submitted a video to document that they locked the rental unit on April 3, 2020 and returned the key through the mail slot in the door of the rental unit.

The Tenants stated that they cleaned the rental unit, regardless of only living there for a very short time and left the unit in better condition than when they moved in. The Tenants submitted approximately 100 photos of the condition they left the rental unit in on April 3, 2020. These photos were not considered for this decision.

The Tenants acknowledged that they had been served the notice of hearing from the Landlord regarding her application for an Order of Possession; however, did not attend the hearing as they had moved out of the rental unit several weeks prior. The Tenants stated that the Landlord lived in the same property with them, had received their text that they had moved on April 3, 2020, and it was obvious that they were no longer living in the rental unit.

The Tenants acknowledged the Landlord’s email about the move-out condition inspection; however, also noted that the Landlord restricted who could attend the inspection and threatened to call the police if Tenant CR attended the inspection. The Tenants did not attend the move-out inspection and did not receive formal notice as they did not live in the rental unit after April 3, 2020.

The Tenants testified that they moved out on April 3, 2020, after paying the full month's rent. The Tenants request compensation for the rent paid for the balance of the month in the amount of $1,923.87.

The Tenants testified that the Landlord yelled at them in front of the Tenants' son, which caused him to suffer PTSD; that she video taped their son jumping on the Landlord's trampoline; turned up the heat in the rental unit; and threatened them with civil action if they didn't comply with her demands. The Tenants claim that they suffered inconvenience, discomfort, pain and suffering, humiliation and mental distress due to the Landlord's deliberate wrongdoing and are claiming compensation in the amount of $1000.00 for each of their family members, for a total of $3,000.00.

With their application, the Tenants submitted a claim for losses regarding time missed from work and breach of contract but did not provide any testimony, direct me to any evidence to support these claims or suggest an amount for compensation during the hearing.

The Tenants are requesting that the Landlord return the security deposit in the amount of $1,065.00.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 7(2) of the Act states that a party who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, all parties have claimed compensation for losses and/or damages under section 67 of the Act.

I accept the testimony and evidence from both parties that a tenancy was established and that the Tenants were responsible for paying monthly rent in the amount of $2,130.00.

The Landlord has claimed a loss of rent for May, and half of June 2020, in the amount of $3,195.00. The Landlord stated that she did not gain access to the rental unit until May 2, 2020 and then could not find new tenants for the rental unit until June 15, 2020. The Tenants stated that they communicated with the Landlord and advised her that they had left the rental unit on April 3, 2020. Based on a balance of probabilities, I find that the Landlord would have known that the Tenants and their young son, had left the rental unit on April 3, 2020, not only because of the text message the Tenants had sent, but because the Tenants were no longer present in or on the residential property.

The Landlord testified that she did not advertise the rental unit for rent, but instead, attempted to find new tenants through “word of mouth”, friends and eventually via her Facebook account, once she had possession of the rental unit. The Landlord stated that she didn’t want to use a property management company to assist her with finding new tenants.

Based on the Landlord’s testimony, I find that the Landlord could have started advertising the unit for rent in early April 2020. I find that the Landlord not only failed to advertise the rental unit to mitigate her losses but only began to informally seek new tenants many weeks after the Tenants had vacated the rental unit.

As referenced in section 7(2) of the Act, the Landlord must do whatever is reasonable to minimize the loss of unpaid rent. In this case, based on the Landlord’s testimony, I find that the Landlord failed to provide sufficient evidence to demonstrate that she mitigated her losses of unpaid rent for the months of May and June 2020. As such, I dismiss this part of the Landlord’s claim without leave to reapply.

The Landlord claimed damages for the broken kitchen faucet in the amount of $51.99. I accept that the Tenants acknowledged that the faucet was broken, stated that it was broken before moving in, and communicated with the Landlord within the first couple of days of moving into the rental unit. Based on the above and the fact that the Tenants had lived in the rental unit for less than 6 days, I find that the Landlord has failed to

prove that the Tenants were responsible for the broken faucet, pursuant to section 67 of the Act. As a result, I dismiss this part of the Landlord's claim.

The Landlord claimed a loss of $35.99 for the replacement of the deadbolt as she claimed that the Tenants did not return the key for the rental unit. Although the Landlord stated that she could not view the video that the Tenants sent her which demonstrated that they had locked the rental unit with the key on April 3, 2020 and returned the key through the mail slot in the door, I found it quite compelling. The Landlord stated the Tenants did not return the key for the rental unit. The Tenants stated that they left the key in the rental unit on April 3, 2020 and provided a video of them doing so. On a balance of probabilities, I find that the Tenants did return the key to the Landlord and as such, I dismiss the Landlord's claim for compensation for a new deadbolt set.

The Landlord stated that she had to clean the rental unit after the Tenants moved out and also incurred costs for cleaning supplies in the amount of $9.86. The Landlord did not provide any pictures of the rental unit to demonstrate that it required cleaning. As such, I find that the Landlord has failed to provide sufficient evidence of the existence of the damage/cleaning required. I dismiss this part of the Landlord's claim.

As a result of the above findings, I dismiss the Landlord's Application in its entirety.

Section 26 of the Act explains that the 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.

In this case and based on the undisputed testimony of both parties, I find that the Landlord and the Tenants entered into a fixed-term tenancy agreement and the Tenants had a responsibility to pay the monthly rent. The Tenants have claimed that they should be compensated for the balance of the month when they paid rent but didn't live in the rental unit; the month of April 2020.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the tenancy agreement.

I find that the Tenants ended the tenancy early and breached the fixed term agreed to in the Tenancy Agreement. I find that the Tenants chose to move out of the rental unit versus staying in the unit and pursuing remedies through the dispute resolution process via the Residential Tenancy Branch. As such, I find that the Tenants have failed to provide sufficient evidence that they should be compensated for the balance of the rent for the month of April 2020. I dismiss this part of the Tenants' claim without leave to reapply.

The Tenants claim that they suffered inconvenience, discomfort, pain and suffering, humiliation and mental distress due to the Landlord's deliberate wrongdoing and are claiming compensation in the amount of $3000.00. The Tenants claimed that their son suffered PTSD because the Landlord yelled in front of him.

I accept that the Tenants lived in the rental unit for less than six days. I accept that the relationship between the Landlord and the Tenants became strained very early on in the short tenancy. When considering compensation for the Tenants, I note that there were no professional reports presented to me about the child's psychological state after being present during the Landlord yelling or after experiencing the 6 days of tenancy in a "distressing" environment.

The Tenants claimed that one of the other distressing actions of the Landlord that caused them pain and suffering was that the Landlord changed the terms of the Tenancy Agreement without their consent, as referred in the "First Warning Letter" from the Landlord, dated April 1, 2020. I find that the Tenants misinterpreted the Landlord's letter as a change of terms for the tenancy. The *Residential Tenancy Act* provides guidelines and standard terms for parties involved in a tenancy as well as remedies to address breaches of the Act.

Although the Tenants claim that the Landlord video taped their son jumping on the Landlord's trampoline; turned up the heat in the rental unit; and threatened them with civil action if they didn't comply with her demands, I do not find that any of this, over a 6-day period justifies compensation of $3000.00. Based on the lack of professional medical evidence and specific examples of the Landlord's "wrongdoing", I find that the Tenants failed to provide sufficient evidence that they suffered a loss, that would require monetary compensation, due to the Landlord's breach of the Act or the Tenancy Agreement, pursuant to section 67 of the Act. As such, I dismiss this part of the Tenants' claim.

The Tenants requested the return of the security deposit in the amount of $1,065.00. When considering the return of the security deposit, I note that the Landlord is still holding the security deposit, the Landlord's monetary claims were unsuccessful, and that I have found that the Landlord should have known that the Tenants wouldn't have received the Notice of Final Opportunity to Schedule a Condition Inspection as they were no longer in the rental unit. I acknowledge that the Act provides direction to

landlords about move-in and move-out inspections and the return of security deposits; however, I do not feel that the Landlord pursued the move-out inspection dates in good faith, especially with the limitations the Landlord placed on the Tenants regarding who could attend and the threatening manner in which she did so. As such, I order the Landlord to return the security deposit to the Tenants.

I have found that the Tenants' claim was largely unsuccessful and therefore, do not award compensation for the filing fee.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

The Tenants' Application is dismissed without leave to reapply, other than their claim for the return of the security deposit.

I order the Landlord to return the Tenants' security deposit within 15 days of receiving this Decision. If the Landlord fails to do so, they may be at risk of owing the Tenants double the amount of the security deposit.

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 24, 2021

Residential Tenancy Branch