Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNDC MNSD FF
Landlord: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 1, 2021.

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages. Neither party took issue with the service of any of the documentation. The Landlord confirmed he was able to open the USB file the Tenant included in his evidence package. I find both parties sufficiently served each other for the purposes of this hearing with their Notice of Hearing and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to compensation for damage to the rental unit or for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Tenant

- Is the Tenant entitled to the return of the security deposit (or double the deposit) held by the Landlord?
- Is the Tenant entitled to a monetary order for damage or loss under the Act?

Background and Evidence

Both parties agree that:

- The tenancy began on August 1, 2020, and ended on October 31, 2020.
- Monthly rent was set at $750.00 and was due on the first of the month.
- The Landlord still holds $375.00 as a security deposit.
- The Tenant signed a 1 year lease, and moved out after only 3 months.
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on October 31, 2020, by way of a text message.
- Subsequently, the Landlord filed his application against the deposit on November 11, 2020.
- A move-in inspection was completed on August 2, 2020, and a copy of this report was provided into evidence.
- It appears the parties met at the rental unit on October 31, 2020, and did a brief walk through of the unit. However, it is undisputed that the Landlord did not complete a move-out inspection report.
- The Tenant rents out a bedroom and a bathroom, and shares a kitchen and common area with 2 other Tenants in the basement, who also rent out bedrooms.
- There are 3 bedrooms in the basement, and there is one common thermostat for all 3 tenants who share this space.
- The Landlord has a lock over the thermostat, and keeps the furnace switched off during the warmer season. The Landlord activates the furnace controls in the winter months when it gets colder.

Tenant's application

The Tenant is seeking the following items:

1) $325.00 – rent reduction and nominal compensation

The Tenant stated that he is seeking $225.00 because there was insufficient heat in the rental unit for the month of October. This amounts to a rent reduction of 30% for that month. The Tenant is seeking this amount for loss of enjoyment of the unit due to the low temperatures along with inability to control the temperature. The tenancy agreement shows that heat should be included in rent, but the Tenant stated that there was no heat until October 21, 2020, which is when the Landlord activated the furnace. The Tenant stated that even after that point, it was still too cold.

The Tenant pointed to the records he kept of the room temperatures, and well as the heating issues document he provided into evidence. The Tenant stated that he took readings of the temperatures in his room with his cell phone via an app he downloaded. The Tenant was asked how this works, and he stated he was “not wise to how it works”. The Tenant was unable to explain whether or not his phone had an actual thermometer in it, or how it was able to capture the temperature. The Tenant stated he was cold and the heat should have been turned on back in September.

The Tenant stated that the tenancy agreement shows that heat is included in rent, and the Landlord effectively denied him a legal right by failing to turn on the heat until October 21, 2020. The Tenant is also seeking a nominal award of $100.00 for the breach of this right, in addition to the 30% rent reduction for the month of October. In total, he is seeking $325.00 for this issue.

The Landlord stated that there are 3 tenants who share this suite, and common areas in the basement, so he has to consider the preferences and wishes of all Tenants, not just one person who finds it too cold. The Landlord stated that, although this Tenant was not happy with the temperature starting sometime in October, he never received any complaints about the heat from the other Tenants. The Landlord stated that he prefers to have a collective agreement for any temperature changes. The Landlord explained that the rental unit has a brand new furnace so it works fine, he just didn’t turn the thermostat on until around October 21, 2020.

2) $750.00 – double security deposit

The Tenant stated that he is seeking double the security deposit of $375.00 because the Landlord has kept the deposits, without a valid reason to do so. The Tenant noted that the Landlord failed to complete a move-out inspection report and as such, he extinguished his rights to claim against the deposit, which means he must pay double.

The Landlord stated that he should not have to return double the security deposit, because he had legitimate items he wished to pursue, and he filed an application within the allowable 15 day window to claim against the deposit. The Landlord acknowledged that he did not complete a report, but stated he did do a walk through with the Tenant at the end of the tenancy.

Landlord's Application

The Landlord has applied for the following items:

1) $100.00 – Labour to fix bathroom sink
2) $16.65 – Part cost

The Landlord stated that the sink drain assembly was in working order at the start of the tenancy, and at the end of the tenancy, it was broken and removed from the sink. The Landlord stated that it took him 2 hours to fix the broken part, plus the cost of the parts, $16.65. The Landlord pointed to the move-in condition inspection report to show that there was no damage noted in the bathroom sink, and he also pointed to the photos he took at the end of the tenancy to show the damaged and missing sink stopper.

The Tenant stated that the sink stopper was not explicitly listed on the move-in condition inspection report, and so there is no evidence to demonstrate that this part was in good working condition at the start of the tenancy or that it was not already broken. The Tenant also feels it should not have taken 2 hours to fix such a simple issue. The Tenant denies breaking this item.

3) $100.00 – Labour to find new Tenant

The Landlord stated that the Tenant signed a one-year fixed term lease, and since the Tenant left early at the end of October 2020, he had to find new replacement Tenants, which took several hours of his time. The Landlord did not elaborate further regarding what he did, or exactly how much time he had to invest to find new Tenants.

The Tenant pointed to the text messages in evidence, which show that he told the Landlord via text, that he was having financial trouble, on or around October 26, 2020. The Tenant he would not be able to pay rent for November, and a few hours later, the landlord asked and offered the Tenant to move out by the end of the month. The Tenant agreed to move out by the end of the month. The Tenant stated that he and the

Landlord mutually agreed to end the tenancy, via text message, and he shouldn't have to pay for this item.

The Landlord stated that the Tenant never gave 1 Month Notice, and he felt put on the spot by the Tenant's text message. The Landlord stated that he did not want to be in a position where he would have to take the Tenant to arbitration to collect rent for November, so he agreed to end the tenancy with the Tenant. The Landlord still feels he should be compensated for his time to find replacement tenants.

4) $100.00 – Labour to clean stove

The Landlord is seeking $100.00 for a "couple" of hours of his time which he had to spend to clean the dirty stove at the end of the tenancy. The Landlord provided photos of the unclean oven and the photos show staining and debris inside the oven.

The Tenant stated that he shared the kitchen with 2 other Tenants so he is not responsible for this issue. The Tenant denies ever using the stove, and feels he should not be responsible for common areas such as this.

5) $6.86 – Gas Utility costs

The Landlord pointed to the tenancy agreement to show that the Tenant agreed to pay for gas charges that were over the "average usage" during the winter. The Landlord explained that the gas furnace was turned on part way through October, and so the above amount represents the costs associated with heating the unit for the last part of October. A copy of the bill for that period was provided into evidence, and the Landlord is seeking a small portion of that bill to account for the last few days of October before the tenancy ended, when the heat was turned on.

The Tenant stated heat was supposed to be included in the tenancy agreement. The Tenant pointed out to the term in the tenancy agreement, under "utilities", but argues that even if he is liable for some of the utilities, it would only be during the winter months. The Tenant stated that the Landlord's written term below the utilities section is ambiguous and unclear and it is not clear when "winter" starts, or what "average" usage would be.

Analysis

Each party bears the burden of proof for their own application. Each party must show the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Tenant's application

The Tenant is seeking the following items:

1) $325.00 – rent reduction and nominal compensation

I have reviewed the evidence and testimony on this matter. I note the Tenant bears the burden of proof on this item, as the applicant. I find the Tenant did a poor job explaining how he collected the temperature readings, via an app on his phone. I find the Tenant's explanation of his data and temperature collection lacked veracity and detail, such that I could find they provide a reasonably accurate reflection of the actual temperature. I have place little weight on the Tenant's temperature log.

I accept that the Tenant found it too cold in the rental unit, for his comfort. However, I note he also shares the heat with 2 other Tenants who share space with him. As such, it is reasonable to expect that a certain amount of compromise on the temperature should be expected. With respect to the Tenant's claim for loss of enjoyment in the amount of $225.00 (30% of rent for October), I find the Tenant has failed to sufficiently demonstrate that it was unreasonably cold. The Landlord stated that he did not receive any other complaints from the other Tenants sharing the space. Ultimately, temperature preferences, and what constitutes sufficient "heat" is highly subjective, and varies from person to person. I do not find there is sufficient evidence that the temperatures were so low that the Tenant's quiet enjoyment of the rental area was impacted. Further, there is insufficient evidence that the unit was not suitable for occupation.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

I find there is insufficient evidence that the temperatures were such that the Tenant suffered a substantial interference with his enjoyment of the space. As such, I dismiss the Tenant's application for $225.00 for loss of quiet enjoyment of the unit for October due to the heat being too low. Further, I note the Tenant is also seeking a nominal amount for being denied access to heat, which is his legal right under the tenancy agreement.

The Tenant opines the temperatures were too low and the Landlord should have turned the heat on much sooner, in accordance with the tenancy agreement. The Landlord stated that they were not low, and no other Tenant's had issues with the temperature. Without reliable readings, it is difficult to ascertain whether or not there was sufficient heat, or whether the Landlord was denying access to the Tenant's right to heat by not turning the furnace on until well into October. The absence of access to the thermostat, and being able to control the central furnace does not mean the unit was insufficiently heated to a reasonable temperature. Ultimately, I find the Tenant has failed to sufficiently demonstrate there was an infraction of his legal right, regarding the "heat". I decline to award the Tenant with the nominal award he is seeking on this item.

2) $750.00 – double security deposit

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As the undisputed evidence is that the Landlord neglected to complete a move-out inspection report, I find that the Landlord has extinguished his right to claim against the security deposit for <u>damage</u> to the unit. Section 38(5) speaks to this issue:

> *38 (5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to <u>damage</u> and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2)* [landlord failure to meet start of tenancy condition report

> requirements] *or 36 (2)* [landlord failure to meet end of tenancy condition report requirements].

However, I find it important to note that extinguishment only applies to the Landlord's right to claim against the deposit for damage to the unit. It does not apply when the Landlord is seeking to claim against the deposit for unpaid rent or utilities. Since part of the Landlord's application relates to matters other than just damage to the unit (utilities), I find he has not extinguished his right to claim against the deposits, such that he was not legally entitled to retain the deposits and file against them for matters unrelated to damage.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was received by the Landlord on October 31, 2020, which is the same day the Tenant moved out. The Landlord filed his application within the allowable 15 day window, and given he did not fully extinguish his right to claim against the deposit, I find he was legally entitled to claim against the deposit and not return it until a decision on this matter is rendered. I find the Tenant is not entitled to double the security deposit.

Furthermore, Policy Guideline #17 states as follows with respect to extinguishment:

> *A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*
>
> *• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
>
> *• to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
>
> *• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
>
> *• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

I find the Landlord is not precluded from applying for damages, regardless of whether or not he extinguished his rights to claim against the deposits held. In other words, the Landlord's application for damage to the unit must still be considered, as extinguishment largely relates to the doubling provisions for those deposits. The merits of the Landlord's application will be addressed further below.

Landlord's Application

The Landlord has applied for the following items:

1) $100.00 – Labour to fix bathroom sink
2) $16.65 – Part cost

I have reviewed the evidence and testimony on this matter. I note the parties completed a walk-through inspection at the start of the tenancy. Both parties signed that move-in report, and agreed that it accurately reflected the condition of the unit at the start of the tenancy. The bathroom sink/stopper/taps are all listed as being in good condition. Although there was no move-out condition inspection report completed, I note the Landlord took photos the day the Tenant moved out, which I have considered as evidence to help demonstrate the condition of the unit at the end of the tenancy. I find it more likely than not that the sink stopper broke while the Tenant was living in the unit. I find the Tenant is responsible for this item. However, the Landlord failed to explain how old the sink is, such that I could determine what, if any, useful life expectancy would be left, under normal wear and tear.

I note *Residential Policy Guideline #40 - Useful Life of Building Element*s, to assist with determining what residual value remains, and what is reasonable for compensation amounts. This guideline states as follows:

> *This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*
>
> *When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item.*

That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In this case, I find a nominal award is more appropriate, given the lack of evidence showing how old the faucet and sink were. I award a nominal amount of $50.00.

3) $100.00 – Labour to find new Tenant

Having reviewed the evidence and testimony on this matter, I note the Landlord provided text messages between the parties which indicated he received a text from the Tenant on October 26, 2020, stating the Tenant would likely not be able to pay for November rent, because his parents ran into trouble in Korea. Later that same day, the Landlord sent the Tenant a text message asking if he was able to move out by October 31. The Tenant replied the same day by saying yes, and agreeing to the Landlord's offer to move by the end of the month.

I note the following portion of the Act:

How a tenancy ends

44 *(1)A tenancy ends only if one or more of the following applies:*

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [tenant's notice];

(i.1)section 45.1 [tenant's notice: family violence or long-term care];

(ii)section 46 [landlord's notice: non-payment of rent];

(iii)section 47 [landlord's notice: cause];

(iv)section 48 [landlord's notice: end of employment];

(v)section 49 [landlord's notice: landlord's use of property];

(vi)section 49.1 [landlord's notice: tenant ceases to qualify];

(vii)section 50 [tenant may end tenancy early];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;
(d)the tenant vacates or abandons the rental unit;
(e)the tenancy agreement is frustrated;
(f)the director orders that the tenancy is ended;
(g)the tenancy agreement is a sublease agreement.

I note the Landlord and the Tenant were not averse to communicating by text message and email, and I find that for the purposes of this portion of the Act, text messages can function as communication "in writing". I find the Landlord and the Tenant agreed, in writing, via text message, that the tenancy would end on October 31, 2020. The Landlord was not required to agree to end the tenancy prior to the end of the fixed term. However, he chose to do so, and I find the tenancy ended by way of section 44(1)(c) of the Act by mutual consent. I do not find the Tenant is responsible for the costs or time associated with re-renting the unit. I dismiss this item, in full.

4) $100.00 – Labour to clean stove

I have reviewed the evidence and testimony on this matter, and I find the Landlord has failed to demonstrate that it was the Tenant who caused the mess in the oven/stove. I note the Tenant shares this kitchen with other Tenants. I find it is not this Tenant's responsibility to clean an oven shared by multiple Tenants, prior to moving out. If the Tenant had exclusive use of the kitchen, the outcome may be different. However, in this case, I find the Tenant is not responsible for this item. I dismiss this item, in full.

5) $6.86 – Gas Utility costs

Having reviewed this matter, I note the tenancy agreement states that heat and natural gas are both "included" in rent of $750.00. I note this agreement also indicates the following: "In winter, Tenant shared the gas bill that is over the average usages."

I find this term is not sufficiently clear. On one hand the tenancy agreement indicates that gas and heat is included, but the Landlord added a term specifying that the Tenant shares the bill if it is over the "average usage" and only in winter. The Landlord did not define or sufficiently explain what the average was or how that would be determined. The Landlord also did not define what period of time he considers to be the "winter". Not only is the date of this clause unclear, but the term itself is unclear, and what constitutes an average usage. I find this term is not sufficiently clear and to make it enforceable, and the Landlord is not entitled to claim for this amount. I dismiss this item, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was largely unsuccessful, so I decline to award his recovery of the filing fee. Since the Landlord was partly successful, I award the $100.00 he paid for this application.

In summary, the Tenant's application is dismissed, without leave, and the Landlord's application is dismissed without leave, except for $50.00 for the nominal award for the sink stopper, plus the filing fee of $100.00. I authorize the Landlord to retain this $150.00 from the $375.00 security deposit, which leaves a balance of $225.00, which must be returned to the Tenant.

Conclusion

The Tenant is granted a monetary order pursuant to Section 38 and 67 in the amount of **$225.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 2, 2021

Residential Tenancy Branch