Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, MNDL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on November 30, 2020 seeking an order to recover the money for unpaid rent and utilities, for compensation for damage to the rental unit, and for other monetary loss. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 23, 2021. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding (the "Notice"). As per Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure*, this must include "any other evidence submitted to the Residential Tenancy Branch directly."

At the start of the hearing, the landlord stated they delivered the Notice in person to the tenant's workplace, leaving that with a receptionist who worked there. Following this, they used registered mail. The landlord provided that this included their prepared evidence, in a "package" they gave to the tenant. Additionally, they provided the evidence via a freeware messaging application.

The tenant stated they did not receive the landlord's evidence. The tenant provided the exact number of pages and contents they received: the 4-page Notice, and a copy of the landlord's 5-page Application. They received no other documents. The tenant described the envelopes they received and described the circumstances.

I find the tenant did not receive the evidence of the landlord. This is based on their detailed description of the documents they received in one package. For this reason, I examine each piece provided by the landlord carefully, and at the outset of the hearing I

advised that if one piece of evidence provided by the landlord gave crucial detail that was of prime importance for the this hearing, I would allow for that specific piece of disclosure to happen. On this basis, the hearing proceeded.

In the hearing the tenant provided that they used Canada Post registered mail to send their evidence to the landlord. They provided the proper tracing number and gave an image of that into their submitted evidence. The landlord verified they received the tenant's prepared evidence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent/utilities, compensation for damage, or other money owed, pursuant to s. 67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on November 18, 2017. The monthly rental amount increased over the course of the tenancy and at the time of this hearing was $1,460. Initially the tenant paid a security deposit of $700 which the landlord retained after the tenancy. The tenancy started on December 1, 2017.

The tenant provided that there was an unwritten agreement that they would pay one-half of each month's utility costs. This was for hearing and electricity. Typically, the bills arrived between the 5th and 9th of every month. The landlord would provide a copy of the bill to the tenant in an open envelope, indicating the amount to be paid each month with a note attached for the correct amount for the tenant to pay. The landlord in the hearing added that the bills arrive on the 22nd of each month.

The tenant also presented that the landlord's preference was for cash only for payments of rent and utilities. They asked a few times for payment by etransfer or other means, but the landlord would not allow for that. The tenant stated the landlord did not provide

receipts for rent payments or utility payments. They would pay cash each month, in a bank-labelled envelope each time.

The final day of the tenancy here was October 31, 2020. The landlord submits that they did not receive a written notice that the tenancy was ending, as is required by the *Act*. They are claiming full rent amount for the month of November because of this very short notice – in effect, there was no notice to vacate. On the Application, the landlord wrote: "No keys returned, no written notice to go move out." This portion of the landlord's claim is $1,460, one full month rent for November 2020.

The tenant submitted a signed letter to the landlords, dated September 30, 2020. This was their notice to the landlord that they would be moving out on October 29, 2020. They stated: "We shall clean the place upon moving and hand the keys back to you." In the hearing, the tenant described how they advised the landlord verbally, even inviting the landlord to visit their new home. This verbal notice was on September 28, and the tenant recollects the day exactly because this was the day the mortgage for their new home was approved. They followed this with the written notice, in an envelope to the landlord on September 30, 2020.

In response to this, the landlord stated they did not see this written notice until it arrived as part of the tenant's evidence package. This was in early March prior to the hearing. The landlord submitted that it was not possible for the tenant to give their notice so late after the actual end of the tenancy.

Under the hearing of "unpaid rent and/or utilities", the landlord claims $2,292 in total. This includes the $1,460 amount for November rent. They also claim $90 for an unpaid electricity bill and $42 for gas; these are each one-half of the billed amounts.

The landlord added the $700 security deposit amount into their $2,292 claimed amount. In the hearing the landlord verified they were still holding that $700 security deposit and did not return it to the tenant. The tenant stated the other landlord who was not present in the hearing made the promise that they would return the deposit after observing the tenant clean on the final day, and after their own inspection of the unit revealed no problems or damage.

The landlord also claimed reimbursement for $122.95 carpet cleaning, for December 6, at 8:30 a.m. They provided a receipt for this in their evidence package, not disclosed to the tenant in advance of the hearing. The landlord adds this to the security deposit amount and wrote $900 for the claim of rental unit cleaning. This included crayon markings on walls, eggs on stove, shower not cleaned, and a broken lock on a storage door.

Additionally, the landlord wrote the amount of $800 for painting needs. In the hearing, they clarified this was for the living room and bedrooms. They provided that an estimator came into the unit to assess. They wrote this estimate amount on a piece of paper and gave this to the landlord, but the landlord did not retain that piece of paper.

The landlord added a claim amount of $3,800. This was for "pain and suffering". They stated this was for their own efforts assisting the tenant with numerous things during the tenancy. This included babysitting, assisting the tenant when they were locked out, showing them how to use the laundry machine. This meant the landlord needed to be away from work in order to attend to the tenant's needs. This also includes their time for the clean after the end of the tenancy.

The tenant disagreed with this portion of the landlord's claim and answered to specific pieces with detail. The tenant responded to this portion of the landlord's claim to say: "[they are] just talking about something that's irrelevant."

Analysis

The relevant portion of the Act regarding the return of the security deposit is s. 38:

> (1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing;
> The landlord must do one of the following:
> (c) repay. . .any security deposit. . .to the tenant. . .;
> (d) make an application for dispute resolution claiming against the security deposit. . .

The *Act* s. 38(4) sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution on November 30, 2020. They did so without knowledge of the tenant's forwarding address – the tenant verified they did not provide forwarding address information to the landlord. This is within the 15-day timeframe set out in the *Act*. I am satisfied that the tenancy ended on October 29, 2020. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

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 all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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 four separate needs: loss of November 2020 rent; unpaid utilities; cleaning and painting; and pain and suffering. To determine the landlord's eligibility for compensation, I carefully examine their submissions for each item. This is to establish whether they have met the burden of proof. I find the landlord did *not* disclose their prepared evidence to the tenant as the *Rules of Procedure* require – the tenant's statements addressing this are more credible than the landlord's recollection on that specific point.

- <u>November 2020 rent:</u>

  Here the landlord claimed they did not receive a proper written notice from the tenant regarding the end of tenancy and the final move-out date.

  The tenant described their initial verbal notification to the landlords in ample detail. They gave the date of this discussion and described clearly the circumstances and location where they initially delivered this news to the landlord.

  The tenant also provided a copy of their letter, signed by both parties on September 30, 2020. While the landlord in the hearing claims they did not see this letter until March 2021 prior to the hearing, this does not mean that the other landlord not present did not see this letter.

  I find the tenant delivered their notice of ending the tenancy to the landlord in the correct amount of time. This meets the requirement in terms of timing of the notice (set in s. 45 of the *Act*) and the requirement in terms of format and content (set in s. 52).

There is no monetary award for November rent. The landlord here did not prove that a monetary loss resulted from violation of the *Act* by the tenant.

- unpaid utilities:

  The tenant's evidence to address this claim was more descriptive and provided ample detail. Quite simply, the tenant provided that they paid the utility amounts in question to the other landlord who was not present in the hearing. The tenant provided detail on how bills were presented to them monthly, and also how they undertook to pay these amounts in cash to the landlord. This ample detail lends credibility to their account that they paid the bills. I find as fact that the tenant paid the bills in question.

  The landlord here did not disclose evidence to the tenant in proper fashion that there were utility amounts outstanding. With no evidence presented, I give more weight to the tenant's account wherein they provide that they paid these amounts. I therefore dismiss this portion of the landlord's claim. There is no reimbursement for $90 or $42 they claimed here.

- cleaning and painting:

  I find the landlord has not established the need for carpet cleaning and painting. No sufficient evidence was provided to show the need for it after the tenancy ended. They did not disclose evidence of the need for cleaning and painting to the tenant in advance of the hearing.

  For this portion of the claim as well, I find the tenant's evidence more credible that they spoke with the other landlord and established that the unit was clean. I find it more likely than not that the tenant met the requirement of s. 37(2) of the *Act*. The landlord did not disclose sufficient evidence to verify this portion of their claim.

- pain and suffering:

  The landlord has not quantified this amount with specific information. They listed various incidents in which they assisted the tenant over the course of the tenancy; however, this was not presented with reference to dates, and specifics as to how their assistance for any of the tasks proved to be an imposition. Additionally, they did not provide solid evidence on dates they missed from work or how anything related to the tenancy or the tenant individually affected their income.

This portion of the landlord's claim is dismissed. Essentially there is no evidence to demonstrate any entitlement to compensation.

The landlord is withholding the security deposit paid by the tenant at the start of the tenancy. This is $700. The landlord has not proved they are entitled to retain any portion of the security deposit and there is no award to the landlord for other money owed. I order the return of the security deposit to the tenant and provide a monetary order to the tenant for the full amount.

As the landlord was not successful in this Application for compensation, I dismiss their claim to recover the $100.00 filing fee.

Conclusion

For the reasons outlined above, I dismiss the Application of the landlord in its entirety, without leave to reapply. The landlord has not provided sufficient evidence to show that damage or loss exists for each of the items they present.

I order the landlord to pay the tenant the amount of $700 for return of the security deposit. I grant the tenants a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 s. 9.1(1) of the *Act*.

Dated: March 24, 2021

Residential Tenancy Branch