Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act) on November 10, 2020, and an Amendment to the Application for Dispute Resolution (the Amendment) seeking:

- Compensation for damage caused by the Tenant, their pets, or their guests to the unit, site, or property;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit against any amounts owed.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord stated that the Notice of Dispute Resolution Proceeding, including the Application and the Notice of Hearing, were sent to the Tenant's forwarding address by registered mail on November 18, 2020. The Landlord provided me with the forwarding address used and the registered mail tracking number, which have been recorded on the cover page for this decision. The Canada Post website confirms that the registered mail was sent as described above and delivered on November 19, 2020. As a result, I

find that the Tenant was served with the above noted documents in accordance with the Act and the Rules of Procedure on November 19, 2020.

I verified that the hearing information contained in the Notice of Hearing was correct, and note that the Landlord had no difficulty attending the hearing on time using this information. As a result, and based on my finding above that the Tenant was served with the Notice of Dispute Resolution Proceeding on November 19, 2020, well in advance of the hearing date, and within three days after it was made available to the Landlord by the Residential Tenancy Branch (the Branch), the hearing therefore proceeded as scheduled despite the Tenant's absence, pursuant to rule 7.3 of the Rules of Procedure.

The Landlord stated that the documentary evidence before me and the Amendment were personally served on the Tenant at their forwarding address on February 4, 2021, at 2:15 PM, in the presence of a witness, and submitted a witness statement to that affect. As a result, I find that the Amendment and the Landlord's documentary evidence were also served on the Tenant in accordance with the Act and the Rules of Procedure, on February 4, 2021, and I therefore amend the Application and accept this documentary evidence for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Preliminary Matter #1

Although the Landlord sought recovery of $12.27 in registered mail costs and $18.94 in printing costs associated with filing the Application, and serving their evidence and the Notice of Dispute Resolution proceeding, these costs are not recoverable under the Act.

Preliminary Matter #2

The Landlord sought two days of unpaid rent at the hearing. However, in their Application they only selected the grounds for compensation for damage caused by the

Tenant, their pets, or their guests to the unit, site, or property; recovery of the filing fee; and authorization to withhold the security deposit against any amounts owed. While the Landlord noted this outstanding rent amount in the body of the Application and in their Monetary Order Worksheets, they did not submit an Amendment to the Application for Dispute Resolution seeking to add a claim for unpaid rent to their Application. As a result, I find that the Landlord did not properly seek the recovery of unpaid rent in the Application and the Amendment.

Although rule 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the Application unless the arbitrator allows a party to amend the application, rule 4.2 states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. Given that the Landlord clearly stated in the body of the Application and in their Monetary Order Worksheets that they were seeking $156.66 in unpaid rent, I find it reasonable for the Tenant to have anticipated that the Landlord would seek this outstanding rent at the hearing, despite not having selected the ground for the recovery of unpaid rent on either the Application or the Amendment. As a result, I allowed the Landlord to amend the Application at the hearing to seek $156.66 in unpaid rent.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord authorized to withhold the security deposit against any amounts owed to them by the Tenant?

Background and Evidence

The Landlord stated that the one-year fixed-term tenancy began on September 1, 2017, at a monthly rent amount of $2,300.00, and that rent was due on the first day of each month. The Landlord stated that a $1,150.00 security deposit was paid, the entirety of which is still held by them in trust. The Landlord stated that at the expiration of the first fixed-term, a second fixed-term tenancy was entered into with the same rent amount but some additional addendum items, and that the tenancy continued on a month to month

basis at the end of the second fixed-term. Copies of the tenancy agreements and addendums were submitted for my review. The Landlord stated that rent was increase in compliance with the Act and regulation to $2,350.00 on December 1, 2018, and submitted a copy of the Notice of Rent Increase.

The Landlord stated that they received the Tenant's written notice to end tenancy, dated September 25, 2020, from their mailbox on approximately October 2, 2020, but do not know when it was placed there by the Tenant. The Landlord stated that the notice to end tenancy indicated that the Tenant was ending their tenancy effective November 1, 2020, and contained the Tenant's forwarding address. A copy of the notice to end tenancy authored by the Tenant was submitted for my review. The Landlord stated that in accordance with section 37(1) of the Act and the tenancy agreement, the tenancy should have ended at 1:00 PM on October 31, 2020, not November 1, 2020. As a result, the Landlord stated that they and the Tenant agreed that the Tenant could pay and additional $156.66 in rent, and stay in the rental unit until 4:30 PM on November 1, 2020.

The Landlord stated that a move-in condition inspection and report were completed with the Tenant at the start of the tenancy on August 30, 2016, as required by the Act and regulation, and that a copy of the move-in condition inspection report was personally provided to the Tenant on September 7, 2016. The Landlord submitted a copy of the completed move-in condition inspection report and copies of text messages in support of this testimony.

The Landlord stated that after negotiations with the Tenant regarding the date and time for the move-out condition inspection and several subsequent requests by the Tenant to move the date and time of the move-out condition inspection, there was mutual agreement between them to complete the move-out condition inspection at 4:30 PM on November 1, 2020, which was the date and time agreed upon for the end of the tenancy. The Landlord stated that when they attended the rental unit at the agreed upon date and time, the Tenant was not there, and the rental unit was unlocked. The Landlord stated that they texted the Tenant to see if they were going to attend the move-out condition inspection as scheduled, and the Tenant advised them that they were too embarrassed to attend and that any remaining possessions were garbage.

The Landlord stated that despite the fact that the tenancy had already ended and the Tenant had failed to attend the move-out condition inspection at the mutually agreed upon date and time, they served the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection (the Notice of Final Opportunity), on the approved

Residential Tenancy Branch (Branch) form, on November 3, 2020, in the presence of a witness, by leaving a copy with an adult who resides with the Tenant at their forwarding address. The Landlord submitted copies of correspondence between themselves and the Tenant regarding the end of the tenancy and the scheduling of the move-out condition inspection, and a copy of the Notice of Final Opportunity, for my review.

The Notice of Final Opportunity states that the move-out condition inspection will take place at 2:30 PM on November 5, 2020, and at the hearing the Landlord stated that the Tenant neither responded to the Notice of Final Opportunity nor attended the scheduled move-out condition inspection. As a result, the Landlord stated that they completed the move-out condition inspection and report in the Tenant's absence, a copy of which was personally served on the Tenant's mother, who resides with the Tenant at their forwarding address, on November 5, 2020 at 4:00 PM. A copy of this report was also submitted for my review and consideration.

The Landlord stated that the rental unit was exceptionally unclean at the end of the tenancy, and required approximately one week of cleaning at 5 hours per day. The Landlord sought $500.00 in cleaning costs.

The Landlord stated that many items were also abandoned by the Tenant which had to be taken to the dump, such as furniture (mattresses, a couch, dining table, shelving units, etc.), broken and rusty bicycles and BBQ's, unwanted clothing, and general refuse. The Landlord stated that they rented a u-haul to dispose of these items, and sought recovery of $66.57 for the u-haul rental, $87.00 in dump fees, $7.00 for gas and $350.00 in labour costs as it took the Landlord and their son more than 7 hours to load and dispose of the abandoned possessions and garbage.

The Landlord stated that the Tenant left lots of holes in the walls and ceiling, and sought $200.00 in labour costs to repair them. The Landlord also sought $25.32 in repair and cleaning supply costs.

Finally, the Landlord sought $156.66 in outstanding rent as agreed upon with the Tenant, for the Tenant overholding the rental unit after 1:00 PM on November 1, 2020.

Neither the Tenant nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

The Landlord submitted significant documentary evidence for my consideration, some of which has already been outlined above, including but not limited to receipts for costs

incurred, photographs of the state of the rental unit at the end of the tenancy, copies of text messages with the Tenant, the Notice of Final Opportunity, the move-in and move-out condition inspection reports, a registered mail receipt, witness statements, move-out and cleaning instructions provided to the Tenant, a copy of the Tenant's notice to end tenancy (which also includes their forwarding address), Monetary Order Worksheets, the tenancy agreements and addendums, and the Notice of Rent Increase.

Analysis

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear. Residential Tenancy Policy Guideline (the Policy Guideline) # 1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Further to this, section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Section 7 also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, regulation, or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the undisputed documentary evidence and affirmed testimony before me from the Landlord for consideration, I am satisfied that the Tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, and that any damage caused to the rental unit during the course of the tenancy for which the Landlord has sough compensation as part of this Application, goes beyond reasonable wear and tear as defined in Policy Guideline #1. I also find that the Landlord has acted reasonably to minimize the damage or loss suffered, by having the rental unit cleaned and the damage repaired in an expedient manner, primarily by themselves, and at a reasonably economic rate.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the undisputed documentary evidence and testimony before me from the Landlord, I find that rent in the amount of $2,350.00 was due on the first day of each

month at the time the tenancy ended. Pursuant to section 37(1) of the Act, I find that the tenancy ended on October 31, 2020, at 1:00 PM, and that the Tenant overheld the rental unit until at least 4:30 PM on November 1, 2020, if not longer. Based on the Landlord's undisputed documentary evidence and testimony and Policy Guideline #3, I find that the Landlord is therefore entitled to the $156.66 sought in per diem rent for the Tenant overholding the rental unit past the end of the tenancy.

Based on the above, I find that the Landlord is therefore entitled to the $1,393.55 in compensation sought for damage, garbage removal, cleaning costs, and unpaid rent. Having made this finding, I will now turn my mind to the matter of the security deposit.

Based on the affirmed and undisputed documentary evidence and testimony of the Landlord, I am satisfied that the Landlord complied with the requirements set out in sections 23 and 35 of the Act, as well as the regulation, and that the Tenant failed to attend the move-out condition inspection at the end of the tenancy, despite there having been a mutually agreed upon date and time for the inspection and despite the Landlord's subsequent service of the Notice of Final Opportunity on the Tenant. Pursuant to section 36(1) of the Act, I therefore find that the Tenant has extinguished their right to the return of the security deposit. In any event, I also find that the Landlord complied with section 38(1) of the Act when they filed the Application seeking retention of the Tenant's security deposit on November 10, 2020, less than 15 days after the date the tenancy ended, as the Landlord had already received the Tenant's forwarding address in the notice to end tenancy. As a result, I find that there was no obligation on the part of the Landlord to return the security deposit, or any portion thereof, to the Tenant and that the doubling provision set out under section 38(6) of the Act does not apply.

As the Landlord was successful in the majority of their claims, I also find that they are entitled to recovery of the $100.00 filing fee for the Application, pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, Policy Guideline #17, section D(4) and the request by the Landlord in the Application to retain the security deposit towards amounts owed, I also authorize the Landlord to retain the $1,150.00 security deposit in partial satisfaction of the above noted amounts owed. As a result, the Landlord is also entitled to a Monetary Order in the amount of $343.55, pursuant to section 67 of the Act; $1,393.55 in compensation sought for damage, garbage removal, cleaning costs, and unpaid rent, plus $100.00 for recovery of the filing fee, less the $1,150.00 security deposit retained.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's $1,150.00 security deposit in partial satisfaction of debts owed by the Tenant to the Landlord.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of $343.55 and I order the Tenant to pay this amount to the Landlord. The Landlord is provided with this Order in the above terms and the Tenant must be served 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.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated orders, nor my authority to render this decision, is affected by the fact that this decision and the associated orders were rendered more than 30 days after the close of the proceedings.

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: April 13, 2021

Residential Tenancy Branch