Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation from the tenant for damage to the rental unit and other damages or loss under the Act, regulations, or tenancy agreement.

The landlord appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the hearing materials upon the tenant. The landlord testified that she sent the proceeding package to the tenant, via registered mail, on December 11, 2020. The landlord testified that she sent the evidence package to the tenant via registered mail on January 14, 2021. The landlord provided the registered mail tracking numbers as proof of service. The landlord stated she obtained the tenant's service address when he served her with a Tenant's Application for Dispute Resolution in August 2020 (tenant's file number referenced on the cover page of this decision). A search of the tracking numbers showed the registered mail packages were delivered on December 14, 2020 and January 15, 2021 respectively (tracking numbers referenced on the cover page of this decision). I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

I noted that the landlord had provided a document entitled "Share Accommodation Agreement" as evidence of a written tenancy agreement. Given the wording of the document, I found it appropriate to further explore whether the Act applies to the subject living accommodation. The landlord confirmed that she did not reside or share the kitchen or bathroom facilities with the tenant at the residential property while the tenant was residing at the property. The landlord explained that she rents out rooms to different tenants who share the common areas of the property with each other. I was

satisfied the Act applies to the living accommodation and it was not exempt from the Act under section 4 of the Act. I did caution the landlord that the "Share Accommodation Agreement" document does not comply with the tenancy agreement requirements and limitations as provided by the Act and I suggested she familiarize herself with the tenancy agreement requirements of the Act.

During the hearing, I noted the landlord provided evidence that she received emails concerning a "damage deposit" and an e-transfer was sent to her by the tenant in October 2020 yet the landlord stated she did not deposit the security deposit. I ordered the landlord to provide the content of the "damage deposit" emails for my further review, which she did.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant, as claimed?
2. Did the landlord collect a security deposit after the tenancy ended?
3. Award of the filing fee.

Background and Evidence

The tenancy started on September 1, 2018. Rent was set at $720.00 payable on the last day of the preceding month. The tenant was supposed to pay a security deposit of $360.00; however, the landlord testified the tenant did not pay it at the start of the tenancy, claiming he had lost his job.

The landlord described the rental unit as being a furnished bedroom with access to the common areas shared with other tenants.

The landlord submitted that the tenancy was set to end on August 31, 2019; however, the tenant placed his possessions in the living room on September 1, 2019 and left other items, such as camping gear, in the garage.

The landlord submitted that the tenant sent her an e-transfer of $320.00 on October 3, 2020 but he would not provide the security answer to the landlord and the landlord was unable to deposit the funds. I asked the landlord why the tenant was sending her $320.00 more than a year after the tenancy ended to which the landlord stated that it was for the "storage" but then she changed her testimony and stated it was for the "damage deposit". The landlord provided a screen shot of her email inbox showing two

emails with the subject line of “damage deposit”. The landlord provided me with the emails entitled “damage deposit” as ordered and I reviewed the content of the emails. The October 3, 2020 email written by the tenant states: “Need your address to release the $”. On October 15, 2020 the landlord wrote: “you know the address [and wrote the address of rental unit]”. The tenant responded the same day, writing “Heard of it.” The landlord provided copies of the emails from Interact including a reminder on November 1, 2020 to deposit the funds by the time the transfer was set to expire on November 1, 2020.

Below, I have summarized the landlord’s claims against the tenant:

Loss of rent -- $735.00

The landlord submitted that she had secured an incoming tenant for the rental unit for September 1, 2019 but the tenant did not give the keys to the incoming tenant. According to the landlord, the incoming tenant informed the landlord that he felt insecure without receiving a key from the outgoing tenant and he was ending the tenancy. The landlord refunded the incoming tenant the rent he had paid for the month less $25.00 for the one night he stayed.

When I asked the landlord why the landlord did not give the incoming tenant a key for the property the landlord stated she did not have time to get a key to the incoming tenant before he decided to leave the premises because she works full time. The landlord also stated that she did not change the locks because the tenant would not be able to get into the rental unit to remove his possessions that were left in the living room.

The landlord provided an e-transfer receipt showing she refunded the incoming tenant his security deposit and rent, less $25.00. The landlord also provided copies of several text messages with the tenant. The text messages demonstrate the landlord attributed the loss of rent and refund to the incoming tenant to the tenant’s failure to return the keys to her.

Storage -- $240.00

The landlord submitted that the tenant left items in the garage, such as camping gear. The tenant’s belongings were in the garage for approximately one year before the tenant came and retrieved them on August 2, 2019.

The landlord testified that she did not attempt to determine the value of the property left in the garage and she did not reach an agreement with the tenant for storage fees. Rather, the landlord contacted storage facilities and determined storage fees are much more than the $20.00 per month she seeks for storage.

Damaged mattress -- $100.00

The landlord submitted the tenant caused a blood stain on the mattress so she disposed of it. The landlord had acquired the mattress from a used goods store and does not have a receipt for its purchase. The landlord acquired another used mattress from a person from the internet and she did not have any receipt or proof of purchase. The landlord provided a photograph of the stained mattress.

Stained bedsheet -- $10.00

The landlord submitted that she placed a sheet on the mattress to use as a mattress protector but it was also stained by blood. The landlord explained she acquired the sheet from a used goods store but that it was only a few years old. The landlord provided a photograph of the sheet before the tenancy started and after the tenancy ended.

Cleaning -- $40.00

The landlord submitted the carpet was also left dirty and she paid" $40.00 to have the carpet cleaned in the bedroom. The landlord produced a receipt showing she paid $40.00 for two hours of labour to clean the carpets and a photograph of the carpet.

Dump costs -- $30.00

The landlord submitted that she also paid $30.00 to have the mattress taken to a dumpster. As such, she has a receipt for his labour but no dump fees.

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.

Loss of rent

Under section 37 of the Act a tenant is required to return the keys to the landlord at the end of the tenancy. I was presented unopposed evidence that the tenant failed to return the keys to the landlord; however, I am not persuaded that this caused the landlord to suffer a loss of rent in the amount of $735.00 or the landlord took reasonable steps to mitigate losses for reasons provided below.

There is no documentary evidence provided to show the communication with the incoming tenant and the reason for ending the tenancy after only one day. Rather, the only evidence I can see is that the landlord refunded money to someone on September 2, 2019.

If the incoming tenant decided to end the tenancy after one day due to a lack of keys, as asserted by the landlord, I find this to be a failing to the incoming tenant by the landlord. A landlord is expected to provide the incoming tenant with a means to access and secure the rental unit, such as giving keys for the rental unit, even if the outgoing tenant has not returned them. It is not upon the outgoing tenant to provide keys to the incoming tenant. Under section 25 of the Act, an incoming tenant may also request the landlord to change the locks for any reason at the start of the tenancy and the landlord

is bound to do so at the landlord's cost. Section 25 is intended to provide security to the incoming tenant.

In this case, the landlord did not deliver a key to the incoming tenant and did not change the locks so as to provide a means of access and security to the income tenant even though she was obligated to do so even if the outgoing tenant did not return his copy of the keys.

As for the landlord's position she could not change the locks because some of the tenant's possessions were in the living room on September 1, 2019, I am of the view that to mitigate losses, the possessions could have been removed from the living room by the landlord, or the tenant would have had to request access from the landlord.

Storage

Where a tenant abandons property at the rental unit, a landlord is obligated to deal with the abandoned property in accordance with the rules found in the Residential Tenancy Regulations ("the regulations").

The landlord provided several text messages exchanged between the parties concerning the tenant's items in the garage. It is clear the from the text messages that the tenant and the landlord did not reach an agreement with respect to storage or storage fees. Rather, it is clear the tenant was seeking return of his possessions in the garage but the landlord was demanding money from the tenant for loss of rent from the incoming tenant, and an amount for cleaning, in order for her to release his possessions to him even though such costs had not been established by way of an agreement or a dispute resolution proceeding.

The landlord did not provide evidence to demonstrate she incurred a loss of $240.00 to store the tenant's possessions; however, I find the landlord held onto the possessions that long because she was unwilling to release them without payment, until such time the tenant had the police involved, as seen in the text messages.

Also of consideration, is that the landlord did not, admittedly, attempt to determine the value of the possessions even though the regulations provide that a landlord may dispose of abandoned property if the cumulative value of the property is less than $500.00.

For all of the reasons provided above, I am not persuaded that the landlord was required to store the property for a year, or incurred costs amounting to the amount claimed for storage, or that the tenant agreed to pay the landlord this amount for storage. Therefore, I make no award to the landlord for "storage" of the tenant's property.

Stained mattress and sheet

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element or items provided with the rental unit is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

The landlord asserts the tenant left the mattress and sheet stained at the end of the tenancy, resulting in her having to dispose of these items and replace them. The landlord provided a photograph showing the sheet on the mattress at the start of the tenancy; however, the condition of the mattress cannot be seen in the photograph and there is no move-in inspection report to show the condition of the mattress at the start of the tenancy. Further, it appears the landlord does not use a proper mattress protector and intends to rely upon a sheet to protect the mattress from stains which is inherently inadequate.

The policy guideline does not provide a useful life for a mattress specifically but provides an average useful life of 10 years for "furniture". Having heard the landlord acquired a used mattress sometime before the tenancy started and the policy guideline indicates "furniture" has an average useful life of 10 years, and the landlord replaced the

mattress with another used mattress, in the absence of evidence to establish the value of the loss is $100.00, I find the landlord has not established an entitlement to compensation of $100.00 and I dismiss this claim.

As for the bedsheet, the policy guideline does not provide the average useful life of a sheet. However, having heard the sheet was a few years old already at the start of the tenancy and the tenancy was for a year in duration, I find it likely the sheet was at the end of its useful life in any event. Therefore, I find the landlord has not established a loss in the amount of $10.00 and I dismiss this claim.

Cleaning

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. The landlord provided a photograph of the carpet in the rental unit and a receipt indicating additional cleaning cost the landlord $40.00. I find this evidence is sufficient to satisfy me that the tenant failed to leave the rental unit reasonably clean at the end of the tenancy and the landlord incurred a loss of $40.00 as a result. Therefore, I grant the landlord's request for compensation of $40.00 for cleaning.

Dumping fee

Although I accept the mattress was stained at the end of the tenancy based on the photographs presented to me, as I indicated previously, the landlord had provided the tenant with a used mattress and the condition of the mattress at the start of the tenancy was not demonstrated by photographs or a move-in inspection report. Nor, did the landlord use a proper mattress protector on the mattress. Therefore, I find I am not persuaded that the tenant is responsible for disposal of the mattress as it may have been at the end of its useful life in any event.

Security deposit

The landlord submitted that the tenant did not pay a security deposit at the start of the tenancy and this position is consistent with the tenant sending an e-transfer of $320.00 in October 2020 that is for a "damage deposit". In other words, if the tenant had paid a security deposit at the start of the tenancy, I see no reason he would attempt to send another security deposit after the tenancy ended.

With respect to depositing the e-transfer after the tenancy ended, I find the emails between the tenant and the landlord and the Interac emails are consistent and it would appear the landlord did not actually deposit the funds because the tenant did not provide her with the password. In reading the emails, it appears the tenant was attempting to obtain the landlord's address, perhaps to serve her with documentation, but she did not provide her address to him. Rather, she only quoted the rental unit address which the tenant would have known already. Therefore, I accept the landlord's position that the tenant did not provide the password to the landlord and the e-transfer was not actually deposited.

Filing fee

The landlord paid a $100.00 filing fee for this Application for Dispute Resolution; however, she had very limited success in her claims against the tenant. Therefore, I make a partial award of $10.00 for recovery of the filing fee.

Monetary Order

In keeping with all of my findings and awards above, I provide the landlord a Monetary Order in the sum of $50.00 to serve and enforce upon the tenant.

Conclusion

The landlord is provided a Monetary Order in the sum of $50.00 and the balance of her claims are dismissed without leave to reapply.

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: April 06, 2021

Residential Tenancy Branch