Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL; MNSDS-DR, FFT

Introduction

This hearing dealt with the landlord's application against both tenants, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the female tenant's application against the landlord, pursuant to the *Act* for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for her application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 97 minutes. The landlord and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Two witnesses provided affirmed testimony on behalf of the landlord at this hearing, "witness GS" and "witness MC." The tenant confirmed that she did not have permission to represent the male tenant at this hearing, as he is her ex-husband.

The hearing began at 11:00 a.m. with both parties and witness GS present. Witness GS was excluded from the outset of the hearing. The landlord left the hearing from 12:14 p.m. to 12:19 p.m. to phone both witnesses and ask them to call into the hearing. I informed the landlord that I did not discuss any evidence with the tenant during the landlord's absence.

Witness GS called into the hearing from 12:19 to 12:25 p.m. Witness MC called into the hearing from 12:27 to 12:34 p.m. The hearing ended at 12:37 p.m.

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord and the tenant both affirmed under oath that they were not recording, and they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle both applications.

Service of Documents

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord's amendment asking to retain the tenants' security deposit. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and amendment.

The landlord confirmed that she did not receive a separate forwarding address from the male tenant after he vacated the rental unit. The landlord stated that she served the male tenant with the landlord's application at the forwarding address provided by the tenant. She said that the male tenant's application package was returned to sender.

Residential Tenancy Policy Guideline 12 does not permit a party to avoid the deemed service provisions for unclaimed or refused registered mail. I find that the landlord was entitled to serve the male tenant at the forwarding address provided by the tenant, since the male tenant did not provide a separate forwarding address to the landlord.

The landlord provided a Canada Post receipt, tracking number and a photograph of the mail envelope for sending her application to the male tenant on October 13, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the male tenant was deemed served with the landlord's application on October 18, 2020, five days after its registered mailing.

The tenant's application, which was only filed by the tenant, not both tenants, was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only,

not any submissions from the landlord. An "interim decision," dated February 22, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenant was required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord was in receipt of the above documents from the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the above required documents.

The landlord confirmed receipt of the tenant's original application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the tenant entitled to a return of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2018 and ended on June 30, 2020. Monthly rent in the amount of $2,800.00 was payable on the first day of each month. A security deposit of $1,400.00 was paid and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to retain any amount from the security deposit. The landlord's amendment to retain the tenants' security deposit was

made on February 26, 2021. A forwarding address was provided by the tenant to the landlord on May 25, 2020, by way of email.

The tenant seeks the return of the security deposit of $1,400.00, plus the $100.00 application filing fee. The landlord disputes the tenants' application.

The landlord seeks a monetary order of $7,471.13, to retain the security deposit of $1,400.00 against the monetary order, plus the $100.00 filing fee. The landlord provided copies of the move-in and move-out condition inspection reports, photographs, invoices, receipts and other documentary evidence. The tenant disputes the landlord's application and provided copies of photographs and other documents.

The landlord testified regarding the following facts. The tenant refused to sign the move-out condition inspection report. There was no mention of the basement linoleum in the move-in condition inspection report. The landlord seeks $2,173.12 to replace the basement linoleum because the tenant probably had an accident and dropped a pot of burning oil, causing burn marks, for which the landlord provided photographs. The tenant was likely operating her business of selling cannabis, oils, shea butter and other products, from the rental unit, despite telling the landlord that she was only making jams and jellies at home. The landlord seeks costs for the blinds at the rental unit since the tenants did not replace the window coverings. The landlord was willing to clean the blinds for the tenants, but they removed them and stored them in the basement. When the landlord went to put the blinds back up, the hardware was missing, and the store would not let the landlord purchase the hardware on its own without the blinds. The landlord provided photograph and receipts for the blinds but forgot to add the labour costs. The landlord also provided a receipt for the range hood. The tenants are responsible for the above costs as per the Residential Tenancy Policy Guidelines.

The landlord stated the following facts. The landlord seeks carpet cleaning costs of $528.51, for which there is an invoice. The costs are included in the addendum to the tenancy agreement and this was an 18-month tenancy. The landlord seeks $700.00 for weed removal, since the grass and weeds were overgrown, and the tenants did not complete yard maintenance. The landlord provided an invoice and photographs of same. The landlord had to replace flower shrubs and provided receipts for $60.00, $69.38 and $57.01 and a landscape cloth amount of $11.99. The landlord seeks costs to rekey the doors of $318.15 and provided an invoice for same. The tenants received two keys and returned them both but did not return the keys to the new French doors, so the landlord had to rekey the locks because there were keys "outstanding, at large, and unaccounted for."

The landlord testified regarding the following facts. The landlord seeks $500.00 for a decorative wood stove that she got from France, which was in the living room. This loss hurt the landlord personally. The landlord agreed that the tenant could move the stove to a basement heated area with the dolly that the landlord provided. When the tenants vacated, the landlord found the wooden stove was rusted, the door was rusted shut, and there were pieces broken and missing. This stove is not sold in Canada anymore, it is only available in Europe, and the landlord provided photographs of similar wood stoves in her evidence. The landlord seeks one month rent compensation of $2,800.00 for July 2020. There is no precedent for this loss because the tenant used the covid-19 pandemic as an “excuse” for the landlord to not show the rental unit to prospective tenants. The tenant was being “spiteful” and did not want the landlord to see the damage to the linoleum flooring. The tenant only sent some photographs of the unit to the landlord, despite stating that she would send more.

The tenant testified regarding the following facts. The tenant disputes the July 2020 rent of $2,800.00 because there were changes to the *Act*, due to the covid-19 pandemic, that did not allow entry into the rental unit by the landlord. The tenant provided the website link to the RTB rule. The tenant provided photographs of the rental unit to the landlord, no response was received from the landlord, and the landlord showed up with a prospective tenant without notice, after sending information to the wrong email. The tenant provided photographs of the rental unit when she moved in, it was not cleaned at all, and there was damage and pre-existing issues. The tenant disputes the lawn and yard charges, as she completed yard maintenance before moving out and submitted photographs of same. The yard photographs submitted by the landlord were taken in July, a month after the tenants moved out, so the weeds and lawn were overgrown during the summer. The tenant submitted documents and a video of power washing. On the move-in condition inspection report, there were weeds, grass and overgrowth noted.

The tenant stated the following facts. The tenant did not cause the burn marks to the linoleum flooring and there was no clear view of the flooring until everything was cleared out. The tenant never made her work products at the rental unit, as they were made in a separate facility, and her business was sold in February 2019. The tenant disputes the blinds charges, as the blinds were blackened, greasy, dirty, and dusty when she moved in. She waited weeks for the landlord to clean the blinds, but it never happened. Due to the tenant’s and her son’s health conditions, the tenant moved the blinds downstairs and did not touch them after, replacing them with her own window coverings in the rental unit. The tenant disputes the wood stove charge, as the landlord agreed she could move the stove downstairs in the storage room. The landlord never provided

a dolly to move the stove, so the tenant borrowed one from a friend, and never touched the stove after moving it. The whole house was damp and cold, and that could have caused the rusting. The tenant disputes the keys charges because the tenant returned two keys to the landlord, and no keys were given to the French doors by the landlord, as the tenant never used those doors.

The landlord stated the following in response to the tenant's testimony. The landlord agrees that she could not get everything cleaned and ready in the house unit in a month time period, since the tenant wanted to the rent the whole house, instead of the smaller portion initially advertised by the landlord. The tenant wanted lots of items completed, and the landlord had new floor, paint and other items done. There is no date on the photographs submitted by the tenant, where she is standing on the grass with her son, or of the flooring. The back of the house and the weeds are not visible in the tenant's photograph. The tenant is lying, the landlord is aware that the tenant sold her business, the tenant's new house is a matter of public record, the tenant used her family and personal situation to take advantage of the landlord, and the tenant has lots of money and tried to withhold June 2020 rent but finally paid it to the landlord. The landlord finds this to be hard, she is older now, she feels "beat up," and she does not want to be a landlord anymore.

Witness GS testified regarding the following facts. He completed 35 hours of yard work but he cannot recall when, although he thinks it was around the beginning of July, not the end of July 2020. He collected three truckloads of weeds, which were heavily overgrown, and could not have grown in one month. The weeds were put in the back of the landlord's truck and taken to the dump. Witness GS was self-employed for 40 years as a sub-contractor. The linoleum flooring looked like someone dropped a pot on it, as he has seen a lot of damaged floors in his work. He did not see the linoleum flooring prior to December 2018. The decorative wood stove had light rust and broken edges, so it was somewhere with moisture. He did not see the stove beforehand. He put up the landlord's new blinds and remounted the other blinds

Witness MC testified regarding the following facts. In December 2018, he installed the linoleum flooring in the small kitchenette, and there was no damage to the flooring at that time. In July 2020, there was a circular mark of damage to the linoleum flooring, which was caused by a hot pot on the floor. He cannot tell what, but the pot must have had oil, it came down hard on the floor, and it was hot. In December 2018, the condition of the house was "good, fair" and there were no marks on the linoleum flooring. In July 2020, he thinks the house was empty for awhile, and he cannot recall if there was plastic on the floor from painting.

Analysis

Credibility

Overall, I found the tenant to be a credible witness. She provided her testimony in a calm, candid and straightforward manner. She did not argue with or interrupt the landlord when she was speaking. She did not respond to the landlord's numerous negative personal comments about the tenant and her family members.

Conversely, I found the landlord to be a less credible witness. I found that she provided her testimony in an upset, agitated, and confusing manner. The landlord frequently interrupted and argued with the tenant and me, while we were speaking. When I asked the landlord questions about the tenancy, she told me to ask the tenant instead. She claimed that she had a lot of paperwork in front of her during the hearing.

When I notified the landlord that both parties would testify first and her witnesses would be initially excluded and recalled later to testify after the parties, she became angry and combative. She stated that she wanted her witnesses to testify first, they had to work, and she did not know if they would be available later. She asked me to take notes of her evidence in a specific manner and when I informed her that I would take notes as I found appropriate, she became upset. The landlord and her witnesses spoke for the majority of the 97-minute hearing time, as compared to the tenant.

Rather than presenting her application, the landlord was more focussed on making negative personal comments about the tenant's brother, ex-husband, and children, the tenant's business and property, and the tenant's financial and living situation. She claimed that she found public records about the tenant's financial and property status. When I asked the landlord about the relevance of this information to both parties' applications, she stated that the tenant was lying, and it showed the tenant's character.

Landlord's Application

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …

7.17 Presentation of evidence
Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

At the outset of the hearing, I informed both parties that the applicants in each application had the burden of proof to present their claims. I find that the landlord did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 97 minutes so the landlord had ample opportunity to present her application and respond to the tenant's claims. During the hearing, I repeatedly asked the landlord if she had any other information that she wanted to add to her submissions. However, the landlord failed to properly go through her numerous documents that were submitted for this hearing. The landlord focussed more on arguing with the tenant and making irrelevant personal comments about the tenant and her family members.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's application of $7,471.13 without leave to reapply. This includes $2,173.12 for linoleum flooring, $264.96 for the blinds, range hood and landscape cloth, $528.51 for carpet cleaning, $700.00 for yard work, $186.39 for shrubs, $318.15 to rekey the locks, $500.00 for a used wood stove, and $2,800.00 for July rent.

The landlord provided a dark photograph of the flooring invoice for $2,173.12. No receipt or proof of payment was provided to show if, when or how any payment was made by the landlord. The invoice appears to be dated for July 27, 2020, almost an entire month after the tenants vacated the rental unit on June 30, 2020. No rental unit address is indicated on the invoice to confirm where the work was done. No breakdown is provided on the invoice, including how many workers completed the work, the rate per hour, the rate per worker, or other such information. The landlord stated that witness MC completed the work, but he did not verify his invoice, the charges or breakdown of the invoice, or other such information, despite the fact that he testified at this hearing. The landlord did not provide photographic evidence of the condition of the linoleum flooring in December 2018, when the tenants moved into the rental unit; she only provided photographs after the tenants vacated. I accept the tenant's testimony that the tenants did not cause the burn marks on the flooring and that the tenant did not complete work-related duties at the rental unit. I find that the landlord and both of her witnesses were speculating, without sufficient proof, as to the cause of the burn marks on the linoleum flooring.

The landlord provided a carpet cleaning invoice for $528.51. The "scheduled date" is noted as July 26, 2020, but the "ordered date" is one day later, July 27, 2020. Both dates are almost an entire month after the tenants vacated the rental unit on June 30, 2020. No breakdown is provided on the invoice, stating how many workers completed the work or the rate per worker. I find that the landlord failed to show that the tenants did not complete carpet cleaning at the end of their tenancy. The landlord did not provide photographic or other documentary evidence of same. The landlord did not make any notations regarding carpets anywhere in the specific rooms of the house in the move-out condition inspection report except at the end of the report by stating: "carpets don't look like they were cleaned."

The landlord provided an advertisement for a used wood stove for $500.00, which was posted on July 8, 2020. No invoice, receipt or proof of payment was provided to show if, when or how any payment was made by the landlord or if the above stove was purchased by the landlord. The landlord did not provide photographic evidence of the condition of the wood stove in December 2018, when the tenants moved into the rental unit; she only provided photographs after the tenants vacated. There is no mention of

the existence or the condition of the wood stove in the move-in condition inspection report. I accept the tenant's testimony that the tenants did not cause the stove to rust downstairs in the basement, where the landlord agreed she allowed the tenants to store the stove during their tenancy.

The landlord provided an invoice for yard work of $700.00 from witness GS. The invoice does not indicate the rate per hour, how many workers completed this work, and does not provide a breakdown of specific tasks completed. Witness GS did not answer the above information when he testified, aside from stating that he completed weeding. He said that he completed this work in early July 2020, despite the fact that the invoice is dated for July 22, 2020. The landlord did not provide photographic evidence of the condition of the yard in December 2018, when the tenants moved into the rental unit; she only provided photographs after the tenants vacated. I find that the landlord failed to show that the tenants did not complete proper yard maintenance at the rental property. "Weeds in grass" is noted by the landlord in the move-in condition inspection report. I accept the tenant's testimony that the tenants completed proper yard maintenance during their tenancy and prior to vacating the rental unit.

The landlord did not provide receipts totalling $186.39 for flower shrubs. The landlord provided receipts with other unrelated items on it and made notations on one of her receipts indicating that $60.00 total was due for items that actually totalled $59.91. The landlord did not provide photographic evidence of the condition of the yard in December 2018, when the tenants moved into the rental unit; she only provided photographs after the tenants vacated. I find that the landlord failed to show that the tenants did not complete proper yard maintenance or that they destroyed the landlord's flower shrubs and which specific shrubs were destroyed. I accept the tenant's testimony that the tenants completed proper yard maintenance during their tenancy and prior to vacating the rental unit.

The landlord provided an invoice for $318.15 to rekey the locks. The invoice is dated for July 27, 2020, almost one month after the tenants vacated the rental unit on June 30, 2020. The landlord did not explain this delay, despite claiming that it was a security issue, since the tenants had her missing keys and she had to secure the unit for the next tenant. I accept the tenant's testimony that the tenants returned two keys in their possession and they did not use the French doors. The two "building entrance keys" are noted as given to the tenants and returned to the landlord in the move-in and move-out condition inspection reports. There is no mention of the tenants being given keys by the landlord to the French doors in the move-in condition inspection report.

I find that the landlord did not provide sufficient evidence of her claim for a loss of July 2020 rent of $2,800.00. During the hearing, the landlord did not provide information regarding if or when she posted any advertisements for re-rental, what information was contained in any advertisements, if or when any showings of the rental unit were completed, or if or when any rental inquiries were answered. The landlord did not review any documentary evidence, such as a new tenancy agreement, any advertisements, or any inquiries regarding this claim during this hearing. As there were restrictions imposed by the provincial government regarding entry into a rental unit by landlords during the covid-19 pandemic state of emergency, I find that the tenants were required to and entitled to abide by those orders. I find that this was not a wilful delay or "excuse" by the tenants to prevent the landlord's entry or ability to re-rent the unit, as claimed by the landlord.

I find that that the landlord did not provide sufficient evidence of her claim for $264.96 for the blinds, range hood and landscape cloth. As noted above, I dismissed the landlord's claims related to the yard work, and I find that this includes the landscape cloth.

I find that the landlord did not provide photographic evidence of the condition of the hood fan in December 2018, when the tenants moved into the rental unit; she only provided photographs after the tenants vacated. The move-out condition inspection report does not indicate any information regarding damage to or replacement of the kitchen exhaust hood and fan.

The move-in condition inspection report states that the blinds required cleaning and "blind old" in the front bedroom area. The move-out condition inspection states that "blinds need remounting – could not inspect." The landlord determined the costs after the move-out condition inspection, when the tenants were not present. I accept the tenant's testimony that due to her and her son's health problems, she could not use the landlord's blinds and had to replace them because the landlord did not clean them. I accept the tenant's testimony that the tenants did not cause the hardware for the blinds to go missing in the basement, where they stored the blinds during their tenancy.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the $100.00 filing fee from the tenants.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the evidence of both parties. The tenancy ended on June 30, 2020. The landlord did not have written permission to retain any amount from the tenant's security deposit. The tenant provided a forwarding address by way of email, which was not an acceptable written method as per section 88 of the *Act*, at that time. However, I find that the landlord was sufficiently served with the tenant's forwarding address by email, as per section 71(2)(c) of the *Act*, as she received the address and served her application documents to that address for both tenants.

Therefore, I find that the doubling provision for the security deposit was not triggered without a proper written forwarding address from the tenant. Accordingly, I find that the tenant is not entitled to double the amount of her security deposit.

The landlord continues to hold the tenant's security deposit of $1,400.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to the regular return of her security deposit of $1,400.00 from the landlord. I issue a monetary order to the tenant for $1,400.00.

As the tenant was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The landlord's entire application against both tenants is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $1,500.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

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: May 18, 2021

Residential Tenancy Branch