Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the "Application") on January 13, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. Additionally, the landlord seeks to recover the filing fee for the application.

The landlord provided proof that showed their delivery of this dispute Notice via Canada Post registered mail. The tenant confirmed they received this package that contained the Notice as well as the landlord's prepared evidence. The landlord also confirmed they received material from the tenant in advance of the hearing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 17, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

Preliminary Matter

The tenant in attendance at the hearing raised their concern about the other former co-tenant not being in attendance. I do not factor this into my analysis. The two tenants are named as respondents in this hearing; they are properly the parties that signed a tenancy agreement with the landlord on March 29, 2019. As provided for in the *Residential Tenancy Policy Guideline 13* – that which gives a statement of the policy intent of the *Act* – co-tenants are jointly and severally responsible for meeting a tenancy agreement's terms. Thus stated, the tenant who attended the hearing bears their own

responsibility for establishing their own equity with the non-present tenant. They are both jointly and severally liable for debts related to the tenancy, and the landlord is not precluded from any compensation awarded because the co-tenants ended their relationship.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation 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 landlord provided a copy of the tenancy agreement between the parties, and neither party disputed its terms. Both parties signed the agreement on March 29, 2019 for the tenancy starting on May 1, 2019. The monthly rent was $1,450 per month, and the tenant paid both a security damage deposit for $725. An addendum attached to the agreement, contains specific instructions for the tenants to complete a move-in inspection on May 1, 2019, and “Do the Move-in Inspection Report.”

The landlord provided a copy of the Rent Contract Extension, whereby the tenancy extended from May 1, 2020 to April 30, 2021. This required post-dated rent cheques for $1,486, and one payment of $18 that brought the security deposit amount to $743.

The landlord provided that there was an initial inspection of the rental unit on May 1, 2019. The ‘Condition Inspection Report’ submitted by the landlord shows the tenant’s signature for move in on page 3 section 4.

The tenancy ended when the tenant gave the landlord a notice to end tenancy. This was via text message on December 23, 2020 advising the landlord that they would move out “at the end of the month.” This message from the tenant also stated: “We will

work on all repairs that need to be done and will leave the apartment in the best condition we possibly can." Further: "We know this is very short notice, but things just happened this way and it's just not possible to stay longer . . ." The landlord responded to clarify: "When you are intend to move out?", and the tenant stated: "At the end of this month. . ."

In the hearing the tenant explained that the agent for the landlord reported that the landlord would make an exception for this very short notice. This agent also provided that they would try to show the rental unit to potential new renters and re-rent for the following month. The tenant provided images of their text message communications with the agent. The message to the tenant on December 30 from the agent states: "[The landlord] said [they] will do an exception this time . . . but have to be . all finish by 12 noon [on January 1]".

The landlord responded to this in the hearing to point to the tenancy agreement, that section which states: "The tenant may end a . . . tenancy by giving the landlord at least one month's written notice."

The move-out date was January 1, 2021. The landlord claimed this was supposed to be end of the month as the tenant notified this date. By that date, when the landlord moved to inspect the unit on that date, by 2:00pm the tenant's move-out process still was not completed. The tenant responded to this to state the agent advised about having to reserve the elevator within the building, and they stated there was an exception for the January 1 move out.

The Condition Inspection Report shows that move-out inspection meeting happened on January 1, 2021. The notation on the document contains the following:

- cannot close properly – windows/coverings/screens in living room
- window glass crack – windows/coverings/screens in master bedroom
- window blind broken at bottom
- toilet seat cover broken
- garburator – broken
- dirty balcony flooring, window & patio door shelf, kitchen cabinet, bathroom exhaust fan, stove top burners and oven

The tenant signed the portion that agreed to the full amount of the security deposit being used for deductions. This is the full amount for $743 in section 2 on page 3. There is also the indication above this that the tenant agreed that "this report fairly

represents the condition of the rental unit." In the hearing, the tenant stated they thought they were signing only for their agreement to show that the report was accurate. They stated the landlord's agent did not state that the signature was for the deduction in full, from the security deposit.

The landlord provided a letter to the tenant dated January 9, 2021. This is a summary of the claim they make in this hearing.

#	Item	$
1	loss of January 2021 rent – short notice and key not returned until January 1	1,486.00
2	change of unit entry lock without consent	100.00
3	areas on the unit not clean – hired cleaner	150.00
4	fridge door two dents	50.00
5	toilet seat broken	35.00
6	garburator not working	75.00
7	bedroom window blind damaged	150.00
8	exercise room washroom door broken	350.00
9	hydro bill outstanding	239.13
	Total	**2,635.13**

The landlord provided receipts for the replacement lock, the cleaning (which shows "balcony, window/patio door, bathroom exhaust fan, kitchen stove/oven, all cabinets"), the fixed garburator, and window blinds. They also provided the current charge amount of $239.13 as showing on the electricity invoice, due on December 29, 2020.

In the hearing, the landlord identified the issue with the exercise room washroom door as not resolved with the strata, who had raised the issue. They stated this was "still outstanding". They did not know the cost and this amount of $350 is an estimate.

The landlord provided a response email from the tenant dated January 11, 2021. This contains the tenant's questions:

- they were never informed of paying January's rent "if the unit didn't get rented out"
- it appeared there was no issue with the tenant moving out early

- the message they received on move-out day “did not talk prices or costs of repairing anything whatsoever” – the landlord only told the tenant to sign the paper and provide a forwarding address
- the landlord preformed another inspection approximately 10 days after the move out - the agent did not inform about any charges
- the toilet seat was only “missing a small cap already” – they are okay paying $20
- the bathroom fan was dirty at the beginning of the tenancy
- the balcony window was fully cleaned; however the balcony “floor was also never cleaned”
- the window blinds in the bedroom “yes, it broke somehow and we can be responsible for it, that’s ok”
- they did not have time to fully clean the oven
- the garburator “just stopped working one day”
- the broken exercise room door occurred in July 2020 – the tenant placed a claim with their renter’s insurance, but this remained unresolved because they never heard anything back about it until the landlord’s letter showing $350 for this – “If the strata contacted the landlord sometime, why did he not tell us to pay him back then?”
- they knew about upcoming hydro bill needing to be paid – as of the date of the letter, they were going to pay the balance of the account “immediately”.
- they “think [they] can pay for some of the cleaning because [they] didn’t have time to fully clean the top of the oven and the cabinet. . .”

The landlord further responded to the tenant on January 20, 2021 to clarify certain points in their earlier letter. The only discrepancy is that of their cost claimed for the toilet seat, for $25, where the earlier letter indicated $35. In this letter they stated: “our differences on the above issues and repair costs are still too far apart to settle.”

In the hearing, the tenant reiterated points made in their correspondence to the landlord, and provided submissions on other points:

- they agreed to pay for the garburator
- they had some understanding with the landlord agent that two bathroom cabinets they had purchased could remain, for the return of the full security deposit
- they paid the invoice for electricity
- they attempted to rectify the broken exercise room door with the strata in July 2020 and never received a reply
- the window blinds purchased by the landlord are an upgrade, and more expensive

In the hearing, the tenant maintained they only signed the Condition Inspection Report because they thought they were agreeing to the inspection. They did not see the dollar amount on the document, or understand that a signature meant they agreed the full amount of the security deposit would be utilized against damages.

The evidence of the landlord does not show two dents in the refrigerator. Nor is there evidence to show the cost for either repair or replacement. This portion of the landlord's claim is denied.

Analysis

The *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient 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.

The largest piece is the January 2021 rent amount in full, for the claimed $1,486. I find this is a loss to the landlord for which the tenant is responsible. I find the tenant's claim here is that the landlord's agent told them that a short-notice vacancy was acceptable. This does not outweigh what is set out clearly in the tenancy agreement and the Act. I find it more likely than not that the landlord's agent referred to January 1, 2021 as an acceptable date for the tenant to complete the move out. Strictly speaking this does not

stand as a waiver of any rent amounts from the tenant that they are legally obligated to pay under the *Act*. At no time did the tenant query the legality of this arrangement.

The original tenancy agreement signed in 2019 has paragraph 14, which states: "The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice." Further, the *Act* s. 45 prescribes the tenant shall provide notice to be "effective on a date that is not earlier than one month after the date the landlord receives the notice."

I find the tenant's short notice to the landlord is a violation of the *Act* and the tenancy agreement. The landlord is entitled to one month rent in compensation for the manner in which the tenant chose to end the tenancy. Again, the provisions of the *Act* and the tenancy agreement outweigh the tenant's understanding of what the landlord's agent informed them of. The message dated December 29, 10:11 PM from the landlord's agent states: "According to the Rental Contract, move out date is always on the last date of the month at 12 noon . . ." Further: "First date of the month is the beginning of the month and rent have to pay in order to stay." By these messages, I find it more likely than not that the landlord agreed to the tenant's *move out only* on January 1, by a certain time ending. I find this was a concession to the tenant; however, this did tie back to the tenant's very late notice to the landlord.

Were this a scenario in which the tenant overstayed a single day *after* the passing of one month after they gave their notice, that would be a questionable claim by the landlord. However, this is a situation where the tenant gave their notice very close to the end of the month. That is the main factor by which I make the award to the landlord for one month's rent. I accept the landlord's submission that it became very hard to have a new tenant in place; this was a direct result of the tenant's very short-term notice to the landlord.

With regard to specific claims for damages, I find the landlord provided ample proof that the lock needed changing after the end of the tenancy. This was otherwise unexplained by the tenant throughout correspondence and messaging with the landlord after the tenancy ended. I award this cost of $100 to the landlord.

The tenant agreed to pay $100 to the landlord for extra cleaning costs after the end for the tenancy. I find this is a reasonable approximation of what was involved, and the tenant did acknowledge certain points of the shortcomings. I balance this against the evidence provided by the landlord which does not show clear images of what work was

needed. I find the landlord presented sufficient evidence to show the unit did not meet the standard set in s. 37, and the tenant was agreeable to this. For this I award $100.

The evidence of the landlord does show two dents in the refrigerator. However, the value of this damage is not established. There is no evidence to show the cost for either repair or replacement. This portion of the landlord's claim is denied.

Similarly, there is not sufficient evidence that shows the amount paid for a replacement toilet seat, nor is there a record that the landlord paid for its replacement. There is no proof of the cost of this item.

I find the tenant has graciously accepted the cost for the garburator service. The landlord presented a receipt that shows this is the cost for repair of that item. I award this $75 piece to the landlord.

I find the tenant accepted responsibility for the window blinds being broken. To their query of the landlord "upgrading" the blinds from plastic to wood, the landlord replied they cost $75 for the purchase and $75 for their installation. This does not match to what the receipt provided shows, which is a single purchase amount on January 7, 2021 for 72x72 blinds, for $158.54. Given that the tenant was amenable to replacing the blinds, I award the landlord $100 for this portion of their claim.

For the exercise washroom door, there is scant evidence on the extent of damage. I accept the tenant's evidence that this happened in July 2020 and was not yet resolved with the strata by the time the tenant moved out in January 2021. I find the tenant was accepting of the damage; however, there is no proof of the value of the damage. Unfortunately, the strata did not rectify this situation before the end of the tenancy, and it is impossible for the landlord to mitigate the costs thereof at this point. It is unreasonable for six months to pass without the matter being rectified and this is not the tenant's responsibility. Given this is an estimate still at this stage, there is no value of the damage established, and for this reason I deny this portion of the landlord's claim.

Finally, I accept the tenant's evidence that they paid the outstanding utility amount that the landlord claimed here. The evidence for this is a screenshot of that amount showing as paid on January 14, 2021. The landlord is not entitled to recover this portion of their claim.

The above awarded amounts total $2,136 in satisfaction of the landlord's claim. The landlord made a claim against the security deposit amount of $743. They are

withholding this amount since the end of the tenancy, and through this hearing process they have established their entitled to claim against it within the legislated timelines. I order this amount deducted from the recovery of the rent and other claimed amounts, totalling $1,393. This is an application of s. 72(2)(b) of the *Act*.

Because the landlord was successful in their claim, I find the landlord is entitled to recover the $100 filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $1,493.00 for damage and other monetary loss, and a recovery of the filing fee for this hearing application. 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.

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: June 8, 2021

Residential Tenancy Branch