Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

On February 22, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 15, 2021, the Landlord amended his Application seeking to reduce the amount of compensation pursuant to Section 67 of the *Act*.

The Landlord attended the hearing and Tenant B.G. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served to each Tenant by email on March 5, 2021. The Tenant confirmed that both of them received this package and he did not have any position with respect to how this package was served. As the Tenant did not have any opposition regarding the manner with which these packages

were served, as the Tenant was willing to proceed, I am satisfied that the Tenants were sufficiently served the Landlord's Notice of Hearing package.

The Landlord advised that he amended his Application and served this to each Tenant by email on March 15, 2021. The Tenant confirmed that both of them received this Amendment. Based on this undisputed testimony, I am satisfied that the Tenants were sufficiently served the Landlord's Amendment.

The Landlord also advised that his evidence was served to each Tenant by email on March 9 and March 12, 2021, and the Tenant confirmed that they both received this evidence. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that their evidence was served to the Landlord by email on March 8, 2021, and the Landlord confirmed that he received this evidence. As such, I have accepted all of the Tenants' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020 as a fixed term tenancy of one year, ending on July 31, 2021. However, the tenancy ended early, when the Tenants gave up vacant possession of the rental unit on February 15, 2021. Rent was established at $1,700.00 per month and was due on the first day of each month. A security deposit of $850.00 and a pet damage deposit of $850.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection was never conducted. However, despite this, a move-out inspection was conducted on February 15, 2021. The Tenants provided their forwarding address in writing on the move-out inspection form.

The Landlord advised that he is seeking compensation in the amount of **$2,475.00** because the Tenants did not pay February 2021 rent. Moreover, as the Tenants gave up vacant possession of the rental unit early, the Landlord had to re-rent the unit as quickly as possible. Luckily, he found new tenants for March 15, 2021 so he is only seeking half a month's rent compensation for that portion of the month. He acknowledged that the total amount in arrears should actually be $2,550.00, but he made a miscalculation on the Application.

The Tenant advised that the Landlord served them a One Month Notice to End Tenancy for Cause (the "Notice") on October 23, 2020 and they subsequently disputed it (the relevant file number is noted on the first page of this Decision). He stated that a hearing was scheduled for January 18, 2021, that his co-Tenant attended this hearing, and that she told him that the Notice was cancelled as the Landlord did not attend the hearing. In reality, a Decision was made on January 18, 2021 and it was determined that the Tenants' Application was dismissed with leave to reapply as neither party attended the hearing. He confirmed that they did not pay February 2021 rent and it was their position that they did not have to pay for the full month of rent.

The Landlord advised he is also seeking compensation in the amount of **$412.50** for the cost of cleaning the rental unit as the Tenants did not return the rental unit in a re-rentable state at the end of the tenancy. He referenced pictures submitted to demonstrate the cleanliness of the rental unit at the end of the tenancy. He stated that in an effort to save the Tenants some money, he did the cleaning himself. He cited a list, submitted as documentary evidence, of the specific deficiencies in the cleanliness of the rental unit and the number of hours it took to rectify each issue. He stated that he spent 16 and a half hours cleaning, and he charged $25.00 per hour for his own time. He testified that there were no deficiencies in the rental unit related to the Tenants' pet.

The Tenant advised that they spent three hours cleaning, that they cleaned to “the best of our abilities”, and that if the Landlord had brought in a cleaner, it “would have cost $40.00” at most to rectify any deficiencies. As well he stated that “if they missed a full oven cleaning, so be it.” He referenced pictures submitted as documentary evidence to demonstrate the condition they left the rental unit in.

Finally, the Landlord advised that he is seeking compensation in the amount of **$175.07** for the cost of replacing the locks to the rental unit because Tenant B.G. returned to the property multiple times after February 15, 2021. While the keys were returned on February 15, 2021, his trust in the Tenants ended when B.G. kept returning to the property afterwards, even though he did not enter the rental unit. As such, the Landlord felt it necessary to change the locks. He referenced an invoice submitted as documentary evidence to support this cost.

The Tenant confirmed that they returned all the keys and they did not make any extra copies. He acknowledged that he returned to the property as he was looking for some random parts.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental

unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit and pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that a move-in inspection was never conducted. While a move-out inspection was completed by the parties, without a move-in inspection to compare it to, this is really a moot point. As a result, I do not find that the Landlord complied with the *Act* or *Regulations* in completing these reports. Therefore, I find that the Landlord has extinguished the right to claim against the deposits. However, as this right pertains to damage to the rental unit, and as the Landlord has also applied for the cost to change the locks, which I do not consider to be damage to the rental unit, I find that the Landlord is still entitled to claim against the deposits.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' deposits, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address in writing on February 15, 2021. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposits on February 22, 2021. As the Landlord made this Application within 15 days of receiving the Tenants' forwarding address in writing, and as the Landlord was permitted to claim against the deposits still, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

However, the pet damage deposit can only be claimed against if there is damage done due to the pet. As the Landlord did not advise of any damage that was due to the pet, the pet damage deposit should have been returned in full within 15 days of February 15,

2021. As the Landlord did not return the pet damage deposit in full within 15 days of this date, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenants a Monetary Order amounting to double the original pet damage deposit, or **$1,700.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent in the amount of $2,475.00, there is no dispute that the parties entered into a fixed term tenancy agreement from August 1, 2020 for a period of one year, yet the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on February 15, 2021.

Sections 44 and 47 of the *Act* set out how tenancies end in this instance. Given that the Landlord served the Notice to end the tenancy in October 2020, and as the Tenants did not even attend the hearing where they disputed the Notice, their Application was dismissed with leave to reapply. Therefore, this Notice was still live and in effect, and they should have vacated the rental unit as a result of the Notice that they were served. By not vacating the rental unit, the Tenants were overholding and the Landlord is still entitled to the rent monies for the time that the Tenants occupied the rental unit. As rent was due on the first of each month, the Tenants are responsible for full payments of rent, even if they vacated the rental unit mid-month.

Given that this was a fixed-term tenancy that was broken early because the Tenants incurred the Notice, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation, and the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the above, I am not satisfied that the Tenants ended the tenancy in accordance with the *Act*, but I am satisfied that the Landlord made sufficient attempts to re-rent the rental unit as quickly as possible after the Tenants gave up vacant possession of the rental unit. As the Landlord re-rented the unit on March 15, 2021, and as the Landlord suffered a rental loss of February 2021 and half of March 2021 rent, I am satisfied that the Tenants are responsible for this amount. Despite the Landlord making a mathematical error in his calculation for compensation, as it is clear how much these rent amounts are, I am satisfied that the Tenants would have reasonably been aware of how much of a loss could be requested. As such, I grant the Landlord a Monetary Order in the amount of **$2,550.00** to satisfy the Landlord's loss for rent owing for the month of February and half of March 2021.

With respect to the Landlord's claim for compensation in the amount of $412.50 for the cost of cleaning the rental unit, while there are no inspection reports to rely on, I have the Landlord's solemnly affirmed testimony and the pictures submitted of the condition of the rental unit at the end of the tenancy. On the other hand, I also have the Tenant's solemnly affirmed testimony and pictures submitted as documentary evidence.

However, I find it important to note that the Tenant advised that they only spent three hours cleaning the rental unit. Despite how clean an individual could keep a residence during a tenancy, I find it reasonable to conclude that that it would generally take significantly more time to clean a rental unit to return it to a re-rentable state. In conjunction with the Tenant stating that they cleaned to "the best of our abilities", I find that I am skeptical of the amount of cleaning that the Tenants actually completed. Moreover, I find it important to note that the Tenant acknowledged that the Landlord could have brought in a cleaner and that it should have only cost $40.00, in his estimation. The fact that he stated that a cleaner could have been hired confirms, in my view, that he was aware that the rental unit was not likely left in a re-rentable state.

In addition, when reviewing the Tenant's pictures, I note that these are mostly pictures of surfaces and fronts of appliances, whereas the Landlord's pictures are of the inside and behind appliances. As well, the Tenant admitted that the inside of the oven may not have been cleaned satisfactorily. Finally, when taking submissions from the Tenant, I found his testimony to be vague, inconsistent, unpersuasive, and lacking in credibility. Based on all these factors, I do not find the Tenant's submissions to be compelling, and I prefer the Landlord's evidence on the whole.

As a result, I am satisfied that the Tenants did not satisfactorily clean the rental unit at

the end of the tenancy, and I grant the Landlord a monetary award in the amount of **$412.50** to satisfy this claim.

Lastly, regarding the Landlord's claim for compensation in the amount of $175.07 for the cost of replacing the locks to the rental unit, given that the Tenants returned all the keys, and as there was no evidence that the Tenants were entering the rental unit after the tenancy had ended, I am not satisfied that there was any reason for the Landlord to change the locks and attempt to claim this amount from the Tenants. As such, I dismiss this claim in its entirety.

As the Landlord was mostly successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Monetary Award Payable by the Tenants to the Landlord

Rental arrears	$2,550.00
Cleaning	$412.50
Filing fee	$100.00
Security deposit	-$850.00
TOTAL MONETARY AWARD	**$2,212.50**

Monetary Award Payable by the Landlord to the Tenants

Double pet damage deposit	$1,700.00
TOTAL MONETARY AWARD	**$1,700.00**

Calculation of total Monetary Award Payable by the Tenants to the Landlord

Owing to Landlord	$2,212.50
Owing to Tenants	-$1,700.00
TOTAL MONETARY AWARD	**$512.50**

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$512.50** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: July 15, 2021

Residential Tenancy Branch