Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by interpreter SH and the tenant was assisted by interpreter XY. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

The landlord affirmed he served the notice of hearing and evidence (the materials) by registered mail on March 14, 2021. The tenant confirmed receipt of the materials in April or May 2021. The tenant did not serve response evidence. Based on the testimony offered by both parties, I find the landlord served the materials in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Prior decision

At the outset of the hearing the parties agreed that a prior decision of the Residential Tenancy Branch was issued on March 04, 2021 (the files numbers are on the cover

page of this decision). The prior decision dismissed the landlord's monetary claim with leave to reapply and ordered the landlord to return double the deposit. Thus, the landlord's application for an authorization to retain the deposit is *res judicata* – a matter already decided upon – and I decline to hear it.

Tenant's current address for service

The tenant affirmed on February 28, 2021 he moved out of the forwarding address provided to the landlord. The tenant did not provide his current address and authorized the landlord to serve documents by email. The tenant's email address is on the cover page of this decision.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 20, 2017 and monthly rent was due on the 20th day of the month. The parties did not complete a condition inspection report when the tenancy started. The landlord submitted into evidence three tenancy agreements:

- tenancy agreement signed on October 12, 2017, fixed-term tenancy from October 20, 2017 to October 19, 2018, monthly rent of $2,700.00. It states: "Rent includes water, sewer and garbage collection. Additional information: tenant pay utility included gas, water, electricity."
- tenancy agreement signed on September 22, 2018, fixed-term tenancy from October 20, 2018 to October 20, 2019, monthly rent of $2,850.00.

- tenancy agreement signed on October 05, 2019, fixed-term tenancy from October 20, 2019 to October 20, 2020, monthly rent of $2,750.00.

The landlord confirmed the tenant paid rent on July 20, 2020. The landlord affirmed the tenant verbally scheduled the move-out inspection for August 17, 2020 and did not attend. The landlord inspected the rental unit and changed the rental unit's locks because the front door was opened.

The tenant affirmed he started removing his belongings on August 16, 2020 and scheduled the move-out inspection for August 21, 2020. Later the tenant affirmed he scheduled the move-out inspection for August 20, 2020 by text message and the landlord did not reply to the text message.

The landlord is claiming for compensation in the amount of $550.00 for garbage removal and cleaning expenses. The landlord affirmed the rental unit had garbage and the tenant's personal belongings on August 17, 2020. The landlord paid $300.00 to remove the garbage and $250.00 to clean the 2,700 square feet, 4-bedroom rental unit. The landlord submitted into evidence a receipt dated September 05, 2020 for the garbage removal and cleaning service in the total amount of $550.00.

The tenant affirmed on August 17, 2020 there were storage boxes, desks, children toys and a piano in the rental unit. The tenant affirmed he planned to clean the rental unit and remove his personal belongings until August 21, 2020.

The landlord is claiming for compensation in the amount of $300.00 for wall damage. The landlord affirmed the rental unit was not damaged when the tenancy started and the tenant damaged the walls in the living room, washroom and bedroom. The landlord paid $300.00 on September 03, 2020 to repair the rental unit. The landlord submitted into evidence a receipt dated September 03, 2020 for "repaint + patch foyer + rooms".

The tenant affirmed the rental unit was damaged and dirty when the tenancy started and he did not damage the walls.

The landlord is claiming for compensation for utility bills from 2017 to 2020.
The landlord affirmed rent did not include water, sewer and garbage collection. Later the landlord affirmed rent during the first tenancy agreement included water, sewer and garbage collection. Later the landlord affirmed rent during the first tenancy agreement included sewer and garbage collection, but not water.

The tenant affirmed rent always included water, sewer and garbage collection and that the first tenancy agreement is the one that should prevail. The tenant affirmed he did not receive the water, sewer and garbage collection bills and did not pay them.

The landlord affirmed the utility bills were mailed to the rental unit during the tenancy. The landlord paid all the utility bills. The landlord does not know when and how much he paid for each bill. Most of the bills were paid after the due date.

The landlord submitted into evidence 12 bills. The bills are for billing periods from October 01, 2017 to September 30, 2020. All the bills indicate one amount for payment on or before the due date and a higher amount for payment after the due date. The bills include a charge for 'meter maintenance residential ¾'. The bills for the billing periods from January 01 to March 31 of 2018, 2019 and 2020 include charges for annual flood protection, annual waste management and annual blue box.

I inquired the landlord why he did not submit a ledger and he affirmed he could provide one.

The landlord submitted into evidence a monetary order worksheet dated March 05, 2021. It indicates the landlord is claiming compensation for house cleaning, garbage removal, damage repair, and 2017 to 2020 city utilities. The monetary order worksheet does not indicate the total monetary order claim.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Garbage removal and cleaning expenses

The parties offered conflicting testimony about scheduling the move-out inspection. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support his claim that the parties agreed to conduct the move-out inspection on August 17, 2020. The landlord did not call any witnesses. I find the landlord did not prove, on a balance of probabilities, that the tenant scheduled the move-out inspection for August 17, 2020.

Sections 26(3) and (4) and 31(1) of the Act state:

> 26
> […]
> (3)Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
> (a)seize any personal property of the tenant, or
> (b)prevent or interfere with the tenant's access to the tenant's personal property.
> (4)Subsection (3) (a) does not apply if
> (a)the landlord has a court order authorizing the action, or

> (b)the tenant has abandoned the rental unit and the landlord complies with the regulations.
>
> […]
>
> 31(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

Regulation 24 states:

> (1)A landlord may consider that a tenant has abandoned personal property if
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> (a)the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
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> (b)subject to subsection (2), the tenant leaves the personal property on residential property
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> (i)that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
>
> (ii)from which the tenant has removed substantially all of his or her personal property.
>
> (2)The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
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> (a)the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
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> (b)the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
>
> (3)If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

Based on the landlord's testimony, I find the landlord could not have changed the rental unit's locks on August 17, 2020, per sections 26(3) and (4) and 31(1) of the Act and that the tenant did not abandon the rental unit, per regulation 24. I find the landlord incurred the garbage removal and cleaning expenses because he changed the rental unit's locks when he could not do so.

As such, the landlord did not prove, on a balance of probabilities, the tenants failed to comply with the Act or the tenancy agreement.

Thus, I dismiss the landlord's application for compensation for garbage removal and cleaning expenses.

Wall damage

The testimony of the parties regarding wall damage is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlord) has not met the burden on a balance of probabilities and the claim fails.

I find the landlord has not proved, on a balance of probabilities, that the tenant failed to comply with the Act or tenancy agreement by damaging the rental unit's walls.

Thus, I dismiss the landlord's application for compensation for wall damage expenses.

Utility bills

Section 6(3) of the Act states:

> A term of a tenancy agreement is not enforceable if:
> (a)the term is inconsistent with this Act or the regulations,
> (b)the term is unconscionable, or
> (c)the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find the tenancy agreement signed on October 12, 2017 is not clear, as it states that rent includes water, sewer and garbage collection and that the tenant must pay for the water. Based on the October 12, 2017 and the convincing testimony offered by the tenant, I find rent included water, sewer and garbage collection from October 20, 2017 to October 19, 2018. The term in the October 12, 2017 tenancy agreement stating that the tenant must pay for water is not enforceable, per section 6(3)(c) of the Act.

Based on the September 22, 2018 and October 05, 2019 tenancy agreements, I find rent did not include water, sewer and garbage collection since October 20, 2018.

Based on the tenant's testimony, I find the tenant did not comply with the tenancy agreement by not paying the water, sewer and garbage collection bills since October 20, 2018 and the landlord incurred a loss.

I find the annual flood protection charge, included in 3 of the 12 bills submitted by the landlord, must be paid by the landlord, as the tenancy agreements do not indicate the tenant must pay this charge.

The landlord did not submit a ledger into evidence. Per Rule of Procedure 3.14, the applicant must submit all the evidence at least 14 days before the hearing. The 12 bills submitted include charges other than the water, sewer and garbage collection. The landlord did not inform how much he paid for each bill or when he paid each bill. As such, I find the landlord failed to prove, on a balance of probabilities, the amount of the loss he suffered.

Rule of Procedure 2.5 states: “To the extent possible, the applicant should submit the following documents at the same time as the application is submitted: a detailed calculation of any monetary claim being made”.

When a party is involved in a dispute resolution, the applicant must ensure that the respondent was informed of the claims being made against the respondent. This includes sufficient particulars of the claims being made against the respondent.

In this matter, it is not clear how much the landlord paid for each bill and the total amount of the loss he suffered.

I note the landlord had a prior monetary application dismissed with leave to reapply. The landlord submitted two consecutive monetary applications, and on both occasions did not include the full particulars of the dispute. I find it is not fair to grant leave to reapply one more time, as this would be prejudicial to the tenant. The Act and the Rules of Procedure are available to the public and the parties must abide by the legislation.

Thus, I dismiss the landlord’s application for compensation for utility bills without leave to reapply.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

For the purpose of educating the landlord, I not that under section 44(3) of the Act, on the date specified as the end of a fixed-term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Conclusion

I dismiss the landlord’s application 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: July 28, 2021

Residential Tenancy Branch