Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on March 15, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for money loss or other money owed. Additionally, the landlord seeks to recover the filing fee for the Application.

The landlord provided evidence showing their delivery of this dispute's Notice in person on March 25, 2021. This was observed by a witness, at the tenant's workplace, as set out on a document entitled Proof of Service. The tenant's representative in the hearing (hereinafter referred to as "tenant") stated that service occurred in this manner. Reciprocally, the landlord in the hearing stated they received the tenant's prepared statement and other prepared document in advance.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 16, 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 evidence during the hearing.

Preliminary Issue

The landlord amended their Application on March 24, 2021. They seek to remove the second tenant (hereinafter in this decision referred to as the "roommate") from this dispute. They stated on the form: "I am REMOVING [the roommate] from this claim because I am not making a claim against [them]. I am only making a claim against [the tenant]."

Given my findings and conclusions, I grant this amendment to the Application. Primarily this concerns the timeline of events concerning the Respondent tenant here exclusively.

Issues to be Decided

Is the landlord entitled to a monetary order for damage or other money owed, 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 the terms therein. The landlord signed the agreement with two tenants (the "tenant" here and their "roommate" for whom the landlord filed an amendment to their Application to explicitly remove as a respondent) on July 28, 2018 for the tenancy that started on September 1, 2018. The monthly rent was $1,550 per month and remained the same throughout the duration of the tenancy. The tenant and roommate paid a security deposit amount of $775.

The landlord pointed to an additional clause in the supplementary document entitled Residential Tenancy Agreement – Tenant Responsibilities:

> Tenant not to allow any person(s) to stay at the premises for more than five (5) nights without first obtaining permission from the landlord. The landlord reserved the right to increase the rent if additional persons are approved.

The tenancy with the named respondent tenant here ended on March 9, 2021. The roommate moved out prior to this at the end of February. The record shows the parties had a meeting to inspect the condition of the unit on February 28, and again on March 8, 2021.

After the end of the tenancy, the landlord filed their Application on March 15, 2021. They seek $7,249.72 total compensation from the tenant for the following:

a. March rent for moving out without proper notice - $1,550

The landlord presented that the tenant advised on February 9 via text message that they were "thinking of moving into a one bedroom by March first" because they could not find other roommates for when their then-current roommate moved out at the end of February. The tenant proposed discussing an agreed-upon date for an end to the tenancy. They also offered to assist the landlord in securing new tenants. In response to this, the landlord responded: "If we can't find a qualified tenant for March 1, you are still responsible for the full March rent." To this, the tenant responded: "That sounds fair, thank you so much."

The landlord testified that they showed the rental unit to prospective tenants throughout February starting on February 10th, with the intention of having new tenants in place for March 1. On February 24, the landlord inquired on having a joint move-out inspection meeting on February 28. After this, on March 4, the landlord queried this tenant on when a good time to do complete a walk-through inspection meeting. The evidence shows they made this same inquiry separately to the roommate for this same date, and that roommate respondent: "This weekend [i.e., March 6th or 7th] sometime."

After other messaging to arrange the schedule, the parties met on March 8, 2021; the evidence for this is the Condition Inspection Report provided by the landlord bearing that date on page 3. This document also shows "half month rent due by 15th due to late notice". A separate message string between the landlord and tenant shows the landlord on March 14th asking for one-half month's rent, by retaining the full security deposit amount: "I think that is more than fair in fact half a month's rent a nice compromise rather than a full month's rent."

On March 14th, the landlord separately messaged to the roommate, to state: "[the [co-landlord] would like to get this resolved before 4:00 today or she wants to make a file for the whole month's rent of march. Do you have any idea how we can get this stupid thing resolved".

In the tenant's written submission, they set out that the landlord proposed raising the rent to $1,580 when they learned of the possibility of the tenant staying into March. The tenant also provided messaging from the roommate to the landlord, showing their

request for a final move-out meeting finalized date. The landlord's response to the query was "If I get new tenants i'm sure they want march 1st or before."

In their written statement, the tenant provides:

> When [the landlord] did not have someone to rent the suite as of March 1st, 2021 [they] asked to keep the whole damage deposit. I asked [them] to reconsider making me pay this amount as I helped [them] try to find people, cleaned constantly, took days off work to make sure the house was clean, etc., but [they were] adamant on getting money from me.

The landlord's claim here for the full rent amount is based on the tenant not having provided a proper notice to end the tenancy, and the roommate's earlier message that: "[The tenant] will be good to rent for March 1st." In the tenant's written submission, they pointed to the roommate's January 31 message to the landlord advising of the end of tenancy: "I just wanted to let you know that I am giving my notice."

In the hearing, the tenant's representative reiterated that there were two tenants, and they both met with the landlord for a final move-out inspection. They roommate was, in effect, notice from the tenant as well. In sum, the tenant's position is that both the tenant and the roommate moved out together.

In response to this in the hearing, the landlord reiterated that the tenant here wanted to stay in the rental unit and was looking for roommates. There were no showings of the rental unit immediately in February for this reason. They received no official notice to end tenancy at all from the tenant here.

b. Unauthorized stay by tenant's sister and tenant's brother-in-law

This portion of the landlord's claim concerns "unauthorized guests" staying at the rental unit for a lengthy period of time. They pointed to the Tenant Responsibilities portion of the agreement set out above.

In the hearing, they set out that they queried the tenant on whether the visiting brother-in-law had self-isolated as required with interprovincial travel. After this, they then realized there was another person staying in the unit, the tenant's sister. They pointed to their knowledge of a new bedroom furniture set purchase as proof that there was no hotel stay prior to another person moving into the rental unit for an extended period of time.

This portion of the claim is based on 43 days for one person's entire stay, for $100 per day. The second person's stay was for 23 days, for $50 per day. The landlord specified this is what they would normally charge for an Airbnb guest per day for one bedroom in the rental unit.

The tenant's written submission sets out that the landlord knew of their sister's stay in the rental unit. The landlord "never objected about her stay at that time" and "had even come in and talked to her multiple times". The tenant claims that the landlord would "find more things to add on [to their claim] such as my sister staying with me in the two bedroom suite. . . "

The tenant's representative in the hearing pointed to part 11 of the tenancy agreement, which states: "The landlord must not stop the tenant from having guests under reasonable circumstances." They reiterated that this was not an unauthorized stay by guests, and not a situation that was unknown to the landlord.

In response to this, the landlord provided that the *Act* does not specify when a guest becomes an occupant. They reiterated the timeline involved: the sister stayed for 43 days, and the brother-in-law stayed for 23 days.

c. <u>damage to rental unit</u>

For this portion of their claim, the landlord listed the following items and expenses incurred after the end of the tenancy:

Damages		
Item	What	Cost
paint and wall repair	materials	84.72
paint and wall repair	labour	60.00
cleaning @ $35/hr	labour for 3 hours	105.00
	Total	**249.72**

The Condition Inspection Report that details the inspection meeting on February 28, 2021 shows the tenant agreeing to amounts specified on page 3. This includes "$60 damage to fridge", with "All cleaning to be done by tenants by March 1st 2020." Page 3 also shows "holes and paint" as part of what the tenant is responsible for. This bears the date of March 8, 2021.

The landlord also provided a copy of a receipt for paint in the amount of $70.72. There are also a series of photos showing drywall damage taken in mid-repair and a clean-out of the bathroom sink, and dirt remaining in the oven appliance drawer.

In the hearing, the landlord stated there is a “second move-out”, which was a further cleaning opportunity. They pointed to a refrigerator-door stain for which the tenant replaced the fridge.

In their written submission, the tenant presented that:

> we completed the cleaning list [the landlord] gave us and checked everything off this includes things [they have] listed such as baseboards, doors, walls, bathroom cabinets and mirror which he has also added to the list of things he would like to charge us for even though they were already done. We forgot 1 drawer which should take 5 minutes to clean. [They] should not be charging us $105 for that. There was a small orange stain on the inside of the fridge door as well but we gave him a whole different fridge for free.

In the hearing, the tenant’s representative specified that any of what the landlord is claiming as damage here is wear and tear as allowed by the *Act*. They present there was “no question after the final inspection was done”, meaning that it is not the tenant’s responsibility. A testament to this is the fact that the tenant here revisited to complete further cleaning on pieces that were discussed at the first inspection meeting on February 28.

Analysis

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 section 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.

a. <u>March rent for moving out without proper notice - $1,550</u>

The *Act* s. 45 sets out that a tenant may end a periodic tenancy by giving notice to the landlord on a date that is not earlier than one month after the date the landlord receives the notice, and, is the day before the day in the month that rent is payable under the tenancy agreement. Given that the tenancy agreement in the evidence expired its fixed-term on January 31, 2021, I find the agreement in place for the month of February 2021 was for a periodic tenancy.

For this portion of the landlord's claim, I find the tenant is obligated to pay for the month of March 2021. They provided no proper notice to the landlord within the timeframe as set out in the *Act*. I conclude the landlord was the recipient of separate yet related messaging from the roommate and the tenant. The roommate advised to the landlord that the tenant was "good to rent for March 1st". It was not until February 9 – past the s. 45(1)(a) timeline – that the tenant advised of their change of plan to find a one-bedroom rental unit elsewhere.

I do not follow the landlord's submission that this was the reason they did not secure new tenants for March 1st. There is evidence that there were showings throughout February, and it is not explained why these showings did not bear out new landlords. Having said that, I am bound by the *Act*.

I find the tenant did not provide adequate notice to the landlord of the end of their tenancy, neither in a timely manner nor in the correct fashion. Moreover, I find the messaging shows the tenant accepted that their having to pay for the March rent was a very real possibility in these circumstances where securing new tenants was paramount for the landlord.

For these reasons, I award the landlord the entirety of the March 2021 rent amount, for $1,550.

b. <u>Unauthorized stay by tenant's sister and tenant's brother-in-law</u>

There is a clause in the tenancy agreement addition entitled Tenant Responsibilities. This requires permission from the landlord for guests staying more than 5 nights. The statement reflecting the landlord's increase in rent is: "The landlord reserves the right to increase the rent if additional persons are approved."

The *Act* s. 13 sets requirements for tenancy agreements. The subsection (f) sets the need for agreed terms in an agreement that *must* set out; subsection (f)(iv) specifies: ". . . if the rent varies with the number of occupants, the amount by which it varies."

I find the agreement provided by the landlord here contains no statement showing *the amount* which would increase with additional occupants. In this hearing the landlord has provided the amounts of $100 and $50, respectively per extra person. Their rationale for this amount is that of a rate comparable to what is charged as per Airbnb.

I find this amount was not agreed to by the tenant or the roommate upon signing the agreement. It is a purely arbitrary amount submitted by the landlord here.

Similarly, there is no record of the landlord bringing this to the attention of the tenants in a timely fashion. I accept the statement of the tenant that the landlord knew about the extra occupants at the time, and then only later came back to the tenant to make a request for recompense only after the tenancy had ended. I accept the submission of the tenant, stated thus: "[they] never objected about her stay at that time."

Additionally, there is no evidence presented by the landlord to show how they arrived at the separate distinct number of days for each of the sister and brother-in-law arrivals, being 43 days and 23 days. The landlord did not present a clear timeline of when additional occupants came into the rental unit, nor their knowledge thereof.

In sum, while the agreement does contain an occupancy clause, it does not appear the landlord undertook to rely on that part of the agreement when the number of occupants in the rental unit increased. For the landlord to come back on this after the tenancy ended, and then claim an excessive amount for a palpable breach of the contract terms does not show an effort at mitigation. On this, I accept the tenant's submission that this is in bad faith.

For these reasons, I dismiss this portion of the landlord's claim.

c. <u>damage to rental unit</u>

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

I accept the tenant's account that they had the opportunity to further clean the rental unit. This was after an initial inspection meeting on February 28. I conclude the deficiencies in cleaning were brought to the attention of the tenant at that time, and then the landlord afforded them the opportunity to further clean and bring the unit to a satisfactory standard. There was ample time for the tenant to accomplish this before the following inspection meeting on March 8, 2021.

There is evidence from the text messages between the landlord and roommate that the tenant agreed to this amount. There was mention of this amount in the tenant-landlord messaging where the landlord referred to this as "the extra very reasonable $60 extra". Ostensibly, from what I can conclude from the Condition Inspection Report, this is for wall holes and paint.

I grant this amount to the landlord as a concession that they had a discussion with the tenant about this particular amount. This is my finding based on the evidence that the tenant had agreed to this amount. Other than this amount, I am not satisfied of any other piece of the landlord's claim, and grant this amount, to incorporate minimal damage to the walls that can mostly be attributed to wear and tear (minus sufficient evidence to the contrary), and a nominal amount of cleaning.

I grant the landlord $60 in total for their claim for damages here.

Based on my findings above, the landlord has established a total claim of $1,610. The landlord has made their claim against the security deposit and the pet deposit. With the landlord holding this amount of $775, I order this amount deducted from the recovery of the rent and damage amounts totalling $1,610. This is an application of section 72(2)(b) of the *Act*.

As the landlord was moderately successful in their Application for compensation, I find they are entitled to recover $50 of the Application filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of $885.00. The landlord is provided with this Order in the above terms, and

they must serve 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: August 26, 2021

Residential Tenancy Branch