Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with a landlord's application for monetary compensation from the tenant for unpaid rent and damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit.

The hearing originally convened on May 21, 2021 and on that date both parties appeared. The parties were affirmed and ordered to not make an unofficial recording of the proceeding. The hearing was adjourned and an Interim Decision was issued on June 1, 2021. The Interim Decision should be read in conjunction with this decision.

At the reconvened hearing of September 23, 2021 both parties appeared. I confirmed that the tenant had served the landlord with evidence during the adjournment in response to the landlord's claims against him, as I had permitted. I also noted that the tenant had provided evidence to the Residential Tenancy Branch; however, upon review of the upload, which was performed by Residential Tenancy Branch staff, the upload was not consistent with the tenant's evidence that was descried to me by both the landlord and tenant. I was of the view an error was made by Residential Tenancy Branch staff in uploading the tenant's evidence and that I would permit the tenant to re-submit the same evidence. I heard the tenant's evidence consisted of bank statements and photographs. The tenant explained the bank statements were submitted in response to the landlord's claim for unpaid rent; however, the tenant also stated that the information provided in his bank statements was consistent with the bank statements the landlord had submitted and served. As such, I found it unnecessary to authorize the tenant to re-submit his bank statements and I informed the parties I would review the landlord's bank statements. During the hearing, I determined it appropriate and relevant to see the tenant's photographs before making my decision with respect to the landlord's claim for garbage removal. I authorized and ordered both parties to upload

the tenant's photographs after the teleconference call. Both parties did upload photographs after the teleconference call ended and I have considered them in making this decision.

On another procedurally matter, an Application for Dispute Resolution by Direct Request filed by the tenant on May 17, 2021 for return of the security deposit and pet damage deposit was joined to the landlord's application. The tenant had not disclosed to me at the hearing of May 21, 2021 that he had made such an application and I did not order the two applications joined. The Arbitrator reviewing the tenant's Application for Dispute Resolution made under the Direct Request procedure ordered the tenant's application be set to a participatory hearing. The Residential Tenancy Branch staff joined the two applications and set September 23, 2021 as the date both applications would be heard, together, by me. Applications should not be joined together after one hearing has convened in keeping with the Residential Tenancy Branch procedures; however, they were joined and there is no prejudice to either party as it was before me to make a decision concerning the tenant's deposits under the landlord's application. Therefore, I do not order the Applications to be severed and I shall dispose of both applications by way of this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent from the tenant?
2. Has the landlord established an entitlement to recover garbage removal charges from the tenant?
3. Is the landlord authorized to retain all or part of the tenant's security deposit and pet damage deposit?
4. Is the tenant entitled to doubling of the security deposit and pet damage deposit?
5. Award of filing fees.

Background and Evidence

The tenancy started on January 1, 2019. The tenant paid a security deposit of $1100.00 and a pet damage deposit of $1100.00. The rent was initially set at $2200.00 payable on the first day of every month. Starting on January 1, 2020 the rent was increased to $2255.00 by way of a Notice of Rent Increase.

The tenant did not pay the rent for April 2020; however, the landlord received $300.00 toward the rent from the government under a program implemented in response to the Covid-19 pandemic.

On September 10, 2020 the landlord issued a Rent Repayment Plan for the unpaid rent for April 2020 requiring monthly payments of $217.22 starting on November 1, 2020.

The tenant failed to pay the rent when due for September 2020 and the landlord applied for an Order of Possession and Monetary Order for unpaid rent for September 2020 rent under the Direct Request procedure (file number referenced on the cover sheet of this decision). The landlord's application was granted and on October 22, 2020 an Order of Possession and Monetary Order for the sum of September 2020 rent plus $100.00 for the filing fee were issued to the landlord.

The tenant filed an Application for Review Consideration in November 2020 but the application was dismissed.

The tenant subsequently paid the outstanding September 2020 rent to the landlord but did not pay the remaining $100.00 toward the filing fee. The tenant also paid the landlord for continued use and occupancy for the months of October 2020 and November 2020. The tenant also paid the rent repayment instalment of $217.22 in the month of November 2020. Both parties testified that they expected the tenant to move out at the end of November 2020.

Landlord's application

The landlord applied for compensation against the tenant and provided a Monetary Order worksheet for three items, as described below:

1. Unpaid rent for April 2020 -- $1737.78

The landlord seeks recovery of the balance of unpaid rent for the month of April 2020 in the net amount of $1737.78 [calculated as $2255.00 - $300.00 - $217.22]. The tenant conceded the landlord's calculation is correct and he owes the landlord $1737.78 for unpaid rent for April 2020.

2. Garbage pick up by the City -- $889.14

The landlord submitted that the tenant piled up garbage, largely consisting of building elements and construction waste, in front of the garage which is located adjacent to a laneway. The City wrote letters to the landlord and to the occupant of the rental unit warning that the debris must be cleaned up or the City would remove it. The landlord also wrote a letter to the tenant on June 11, 2020 demanding he remove the garbage from in front of the garage as the garage was for the landlord's use under the tenancy agreement. The landlord testified that the tenant merely moved the garbage further into the laneway. The City came and took it away the debris and billed the landlord $889.14.

The landlord provided copies of the warning letter from the City, the landlord's letter to the tenant, and the City's bill for garage removal. The landlord also provided photographs of the garbage piled in front of the garage.

The tenant acknowledged receiving warnings letters from the City with respect to the garbage pile encroaching into the laneway. The tenant stated upon receiving the letters he would contact the landlord and tell the landlord that he should do something about the garbage as the tenant was of the view the garbage issue was the landlord's responsibility. The tenant stated he also called the City to explain the situation. The tenant submitted the landlord ignored the problem, resulting in the City eventually coming to remove the garbage.

The tenant testified that when his tenancy started the backyard was full of garbage including tires, wood, poles, a large furnace, among other things. The tenant had a dog and the debris was dangerous for his dog so he moved it in front of the garage so the landlord would do something about it. The tenant also stated that the rental unit was in such poor condition at the start of the tenancy that the house should have been condemned and the basement was full of construction debris left by the former tenant(s) which he also removed from the house and piled in front of the garage. The tenant stated that other people in the neighbourhood started adding materials to the pile. The tenant provided photographs of the garbage in the backyard when the tenancy started.

The landlord acknowledged that the backyard had garbage in it when the tenancy started but the landlord claimed he paid the tenant $150.00 in cash to dispose of the garbage. As such, the landlord stated, repeatedly, that the garbage that was hauled

away by the City was unrelated to the garbage on the property at the start of the tenancy.

The tenant denied receiving $150.00 to dispose of the garbage that had been left on the property when his tenancy started and the landlord merely left it there for him to deal with. The landlord acknowledged he did not submit corroborating evidence to demonstrate the payment to the tenant for disposition of the garbage in the backyard at the start of the tenancy. The landlord claimed he had a text message to support his position but he acknowledged he had not provided it as evidence for this proceeding.

The landlord was of the position the accumulation of garbage was likely the result of the tenant being in the home renovation business, constructing a suite in the basement, taking down fences and decking on the property. The landlord also speculated that the tenant's roommate brought home construction debris as a result of his employment with a large well known restoration company as he saw one of the restoration company vans parked at the property.

The tenant denied being in the home renovation business, and stated that his roommate who worked for the restoration company did not bring construction waste home with him. The tenant maintained that the construction debris placed in front of the garage was garbage on the property when his tenancy started.

As for a move-in inspection report, both parties provided consistent statements that the landlord did not complete one at the start of the tenancy.

3. Filing fee

The landlord requested recovery of the filing fee paid for this Application.

In addition, the landlord requested that I also add the unpaid filing fee from the landlord's previous Application for Dispute Resolution by Direct Request to the Monetary Order I issue since the tenant did not satisfy $100.00 of the Monetary Order issued on October 22, 2021. I informed the parties that an unsatisfied Monetary Order may be enforced in Small Claims court and I cannot award a filing fee that was paid and awarded for a previous Application for Dispute Resolution.

The landlord also attempted to introduce evidence concerning other damage and missing items to the rental unit; however, I did not allow such submissions as the landlord had not made a claim for losses other than the three items described above.

Tenant's application

The tenant filed for return of the security deposit and pet damage deposit.

The tenant did not provide the landlord with any written authorization to retain or make deductions from his deposits and the landlord still retains the deposits pending the outcome of this decision.

The tenant provided his forwarding address to the landlord by way of a letter dated December 30, 2020. The tenant had provided an Xpresspost receipt issued on January 4, 2021 in an effort to show when he mailed the letter to the landlord.

The landlord acknowledged receiving the tenant's forwarding address by way of the letter in January 2021 and the landlord filed his claim against the tenant's deposits on January 18, 2021.

During the hearing, the tenant acknowledged that the landlord made a claim against his deposits with the time limit for doing so.

Analysis

Tenant's application

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenant sent a forwarding address to the landlord by Xpresspost mailed on January 4, 2021. The landlord proceeded to file a claim against the tenant's deposits on January 18, 2021. Therefore, I find the landlord complied with the requirements of section 38(1) and the tenant is not entitled to doubling of the deposits.

In keeping with the above, I dismiss the tenant's application, without leave to reapply, and I shall dispose of the deposits, in their single amount, under the landlord's application.

I make no award for recovery of the filing fee to the tenant as the tenant's application was unnecessary since the landlord had already made a claim against his deposits and I found, in the Interim Decision, that the delay in the tenant receiving the landlord's Application for Dispute Resolution was due to the tenant's choice of mailing and forwarding address he provided to the landlord.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss,* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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 burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's application.

1. Unpaid rent for April 2020

It was undisputed that $1737.78 of the rent for April 2020 remains outstanding and the landlord is entitled to recover that amount from the tenant. Therefore, I grant the landlord's request for an award in this amount.

2. Garbage pickup by City

It is undisputed that garbage was pilled up in front of the garage by the tenant, and it encroached into the laneway. It is further undisputed that both parties received warnings from the City concerning the unlawful placement of the garbage and that if the garbage was not removed the City would remove it. It if also undisputed that neither party removed the garbage, the City came and took it away, and the landlord was billed $889.14 by the City.

At issue is who is responsible for the garbage accumulation in the laneway and the cost to remove it. Both parties pointed to the other party as being responsible for removal of the garbage.

In essence, the landlord is of the position the tenant and/or persons he permitted on the property brought the garbage to the property and improperly placed it in front of the garage and in the laneway. The tenant acknowledged placing garbage in front of the garage but claims the garbage was on the property when his tenancy started and he had to remove it from the house and the backyard so as to use and enjoy the property.

The landlord claims to have paid the tenant to remove the pre-existing garbage early in the tenancy; however, this was disputed by the tenant and the landlord did not submit and serve corroborating evidence in support of his position. Further, when I look at the volume of debris at the property when the tenancy started, I find it unlikely the tenant would agree to load, haul away and dispose of such large, bulky items for only $150.00. Therefore, I find the landlord's position unlikely, unsupported by evidence and I do no accept it.

The landlord also suggested that the tenant's roommate may have brought construction debris home from his job; however, I find it highly unlikely that a large restoration company would require its employees to take construction garbage home from its jobsites and I reject the landlord's speculative position.

The landlord also suggested the tenant was in the home renovation business and the tenant's business resulted in the accumulation of construction debris; however, the tenant denied that to be accurate. Rather, the tenant submitted that the rental unit was in extremely poor condition and various building elements and construction debris was at the property when the tenancy started and the tenant's position was supported by photographs. Therefore, I find the landlord's position not sufficient supported.

When I look at the photographs provided by both parties, I note that the garbage in both sets of photographs appears to be mostly building elements and construction debris. I am unable to distinguish the garbage pile in front of the garage from the garbage in the backyard. As such, I am of the view there is reasonable likeliness that the garbage that ended up in front of the garage and in the laneway was garbage from the property when the tenancy started, at least in part.

Although I am reasonably satisfied that the garbage in front of the garage was, at least in part, pre-existing garbage on the property when the tenancy started, I am also of the view that the tenant, in taking the garbage from the house and yard to the laneway, resorted to self-help that was in violation of the City bylaw and the tenant was given fair warning of such a violation by the City. Yet, the tenant did not bring the garbage back onto the property. And, neither did the landlord undertake action to remove the garbage after receiving warnings letters from the City to avoid the costs the City would charge him. Certainly, the cost to dispose of the garbage privately would have been less expensive than leaving it for the City to do.

All of the above considered, I find the actions, or lack thereof, of both parties resulted in the City hauling away the debris and I apportion the cost as follows:

- 75% is allocated to the landlord as the landlord provided the tenant with a property that had a significant accumulation of garbage when the tenancy started; and, the landlord did not have the garbage removed from the laneway despite the advance warnings from the City
- 25% is allocated to the tenant as the tenant resorted to self help in removing garbage for the property and placing it in the laneway, which is in violation of the City bylaw

In keeping with the above, I award the landlord recovery of 25% of the garbage removal from the tenant, or $222.28.

3. Filing fee

The landlord's claim had merit and I award the landlord recovery of $100.00 paid for this Application.

Security deposit, pet damage deposit and Monetary Order

In keeping with all of the above findings and awards, the landlord is awarded compensation totalling $2060.06 [$1737.78 + $222.28 + $100.00]. The landlord is authorized to deduct $2060.06 from the tenant's security deposit and pet damage deposit, leaving a balance owing to the tenant in the net amount of $139.94 [$2200.00 – $2060.06].

In keeping with Residential Tenancy Policy Guideline 17, with this decision I provide the tenant with a Monetary Order in the amount of $139.94.

Conclusion

The landlord is authorized to deduct $2060.09 from the tenant's deposit and the tenant is provided a Monetary Order for the remainder of the deposits in the net amount of $139.94.

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: September 29, 2021

Residential Tenancy Branch