Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an application for Dispute Resolution (the "Application") on March 30, 2021 seeking an order to recover monetary loss for unpaid rent, and compensation for damages and other money owed by the tenant. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on August 27, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). 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.

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared documentary evidence via email to each of the tenants, on April 9 and April 14, 2021. This method was authorized by the Director of the Residential Tenancy Branch in a separate order. The tenant confirmed they received the landlord's evidence.

The tenant who attended the hearing stated they submitted their evidence in response to the Application, doing so "online." The landlord stated they did not receive disclosure from the tenant. This is a situation where the tenant provided material to the Residential Tenancy Branch but did not send this disclosure to the landlord. On careful review with the parties, I determined that these submitted pieces were copies of emails between the parties, sent during the tenancy. I clarified with the parties in the hearing that I would proceed and address specific pieces or individual email items should the need arise and did so in one instance where the tenant forwarded that piece directly to the landlord during the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to a monetary order for compensation for damage to the rental unit, and/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

The landlord provided a copy of the tenancy agreement and spoke to its terms. The parties signed this agreement on July 31, 2020. The tenancy started on August 1, 2020 for a fixed term ending on July 31, 2021. The monthly rent was $2,700 per month. The tenant paid a security deposit of $1,350. The agreement contained an Addendum, signed by the tenants and the landlord, wherein clause 3 states: “Your lease agreement is for a one-year term. Should you vacate early, one full month worth of rent (liquidated damages) must be paid by certified funds with your notice of termination.”

The tenancy ended after the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 9, 2021. This gave the final move-out date of February 19. This informed the tenants that they failed to pay rent of $2,765 on February 1, inclusive of a $65 fee that is set out in the tenancy agreement.

The tenant in the hearing presented that they informed the landlord of their intention to end the tenancy on January 14, 2021. They forwarded this message to the landlord while the hearing was underway to ensure the landlord could review it. This stated: “Please accept this email as my formal notice to terminate our tenancy . . . Due to COVID I have been laid off and can no longer afford the condo.”

The landlord responded to this on the same day via email, to state that “we will try our very best to re-rent for February 1, however if it is not re-rented then as per the terms of your lease and as per the act you would be required to compensate February rent.” On that same date, the landlord queried the tenant on the use of a form for the specific purpose of advising of the end of tenancy; the tenant responded: “We will sign the form and send it back.”

On January 18, 2021, the landlord queried the tenants again on their final set move-out date. The tenant responded: “We. . . have yet to decide regarding tenancy as vacating the unit is our last option.”

The landlord presented in the hearing, with reference to their own evidence, that they notified the tenant that the rent was not paid, on February 4th. They then gave the tenant an extra five days to make the rent payment. When this did not happen, they issued a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) on February 9.

not This 10-Day Notice gave the final move-out date of February 19, noting the tenants’ failure to pay rent of $2,765 on February 1, inclusive of a $65 fee. The tenants messaged to the landlord on February 12 to state they were unable to pay the remainder of February’s rent: “We will not contest the notice & leave the property in excellent condition in order for you to lease it immediately.”

When queried by the landlord about February rent, the tenants confirmed they were not consenting to the landlord’s proposal to forfeit the return of the security deposit for rent payment. The tenants at that time also acknowledged the landlord would start a dispute resolution process.

February 19 was the tenants’ final move-out day. In the hearing, the landlord stated they entered the rental unit on this date to find it in an unclean state and emailed to the tenants about this. They then reactivated the fob so the tenants could return to undertake further cleaning. By the 22nd, the tenant messaged to state they did not have the further chance to clean the rental unit; however, at 11:08am on that same date they left the keys at the concierge. The landlord again entered the unit on the 23rd to find it in the same state.

The landlord made their Application for compensation for the following:

- February rent: $2,700
- cleaning: $231
- wall repair, painting, item removal/disposal: $766.50
- March rent loss/liquidated damages: $2,700

The landlord provided a “Move out Inspections” form noting the inspections of February 19 and 23. This notes the need to remove and dispose of a broken TV, with resulting patching sanding and painting of walls. This also noted damage to other walls. The report noted $231 for cleanup and provided an itemized list for $766.50 of repairs.

The landlord provided photos showing the need for refrigerator cleanup and disposal of food within, walls and flooring and bathroom silicone. The separate slides for the TV mount are also provided. The landlord provided a receipt for a total amount of $840 including tax – this is the amount for maintenance work involved. Another receipt shows “move out clean” for February 28, 2021 for the total amount of $231.

The tenant raised the issue with the itemized receipt showing work for a kickboard under the dishwasher and shower caulking. They stated the landlord was aware of these damages and partially it was work completed prior to their tenancy. The landlord noted this and explained they were not claiming for this amount. This accounts for the discrepancy between the invoice amount of $800 and the landlord’s claim for $766.50.

In the hearing, the landlord had the opportunity to explain their prepared ‘Monetary Order Worksheet’. They stated the $65 late fee for February rent was not included; they stated their wish to amend the claimed amount total to add this amount. The tenant raised the issue

In the hearing, the tenant provided their summary statements that the rental unit was not in need of cleaning to the extent that the landlord submitted was necessary. They stated this was really normal wear and tear when it came to the level of cleanliness. Aside from this, the tenant did acknowledge they had left houseplants and a TV attached to the wall which was broken.

Analysis

From the testimony of the landlord, I am satisfied that a tenancy agreement was in place. The landlord provided the specific term of the rental amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* s. 45 sets out how a tenant may end a tenancy:

45(2)

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the evidence of the landlord is that the tenants breached the fixed term tenancy agreement by advising the landlord of an end of tenancy that was not clear or specific on a date. I find the eventual end of tenancy was the result of the landlord issuing the 10-Day Notice; however, by February 12 the tenants still did not provide a move-out date to the landlord. After this, the tenants delayed the move out further, even beyond the February 19 visit by the landlord where they were afforded more time to move out and clean the rental unit adequately.

I find a remedy is in order where the tenants breached the *Act* s. 45. I award the full month of February rent, for $2,765. This was the pretext for the landlord issuing the 10-Day Notice and the payment of rent for February remains unresolved. Moreover, I find the tenants held over until at least February 23rd. The tenants did not present submissions to show February rent was not owing or legally barred; from this I find they are acknowledging the need for February rent payment.

The *Residential Tenancy Policy Guideline 4. Liquidated Damages* is in place to provide a statement of the policy intent of the *Act*. It provides: "The amount [of damages payable] agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable."

Here, the clause in question states: "Your lease agreement is for a one-year term. Should you vacate early, one full month worth of rent (liquidated damages) must be paid by certified funds with your notice of termination."

I find this clause is not a genuine pre-estimate of loss, with no framework for its need in place; therefore, it exists and is imposed on the tenants as a penalty. The tenants breached the agreement in a way that left the landlord not knowing throughout the final month what the next steps were, and in their evidence the landlord has established that they were making inquiries throughout February on the status of the end of the tenancy, then ensuring the tenants had the full opportunity to perform a full clean prior to assessing any damage or loss. I find this cutover into the following month because by February 23rd, arrangements were still tentative. This left the landlord approximately 5 days to find replacement tenants, despite advertising in place prior to this. I attribute this to the tenants extending the move-out process longer than necessary, without clear information relayed to the landlord throughout.

The landlord testified that beyond this, new tenants were in place for only an amount of $2,300, which is $400 less than the rent paid by the tenants here. This represents an ongoing loss. Because it stems from the tenants' breach, I award the amount of March rent as recompense for this, despite the liquidated damages clause being punitive in nature. Primarily,

this was the tenants not advising the landlord of a firm move-out date for an extended period. This is not in line with what the *Act* and the tenancy agreement prescribe for a fair and equitable end to the tenancy. For this breach, I award the amount of $2,700 to the landlord.

Concerning the condition of the unit at the end of tenancy, s. 37 specifies that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

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.

I find the tenant in the hearing acknowledged that a security deposit was in place precisely for the purpose of covering expenses due to residual matters left behind at the end of the tenancy. The tenant disagreed with the blunt way the landlord described the state of the unit; however, I find they acknowledged the unit was not in ideal condition at the end of the tenancy. This was with regard to the TV attached to the wall, and other items left behind.

I find the landlord has established the need for painting and repair, in particular for the master bedroom. The landlord supplemented their inspection report with photos that show this damage. I find these areas are *not* attributable to wear and tear, with the tenancy being relatively short in duration with respect to the damages found and the rather unfinished, only semi-vacant state of the unit. This is the $766.50 amount added to the award.

Similarly, the landlord's photos show the need for further cleaning. The evidence shows the tenants did not return to complete the job in February; again, the landlord was making inquiries throughout the month of February to establish a firm move-out date. Also, the landlord reactivated the fob for the tenants' re-entry; however, through the evidence I find a final comprehensive cleaning was not completed. This is the $231 amount added to the award.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $6,462.50. After setting off the $1,350 security deposit amount, already retained by the landlord, there is a balance of $5,112.50. I am authorizing the landlord to keep the security deposit amount and award the balance of $5,112.50 as compensation to them.

Because they are successful in their application, I grant the $100.00 cost of the filing fee to the landlord.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $5,212,50. 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: September 1, 2021

Residential Tenancy Branch