Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDCL-S, MNDL-S, FFL
For the tenant: MNSD, MNDCT, FFT

Introduction

The Landlord WM filed an Application for Dispute Resolution in this matter on December 25, 2020 seeking compensation for damage to the rental unit by the tenant, and other money owed. Additionally, they seek reimbursement for the Application filing fee.

The tenant filed their Application for Dispute Resolution on January 10, 2021. They named a separate party as the Respondent landlord, YM. The tenant seeks the return of the security deposit not returned by the landlord, and compensation for other monetary loss. Additionally, they seek reimbursement of the Application filing fee.

Preliminary Matters

identifying the landlord

The tenant in their Application named the landlord YM. The landlord WM was the individual who applied as the landlord on December 25, 2020. In the hearing, the tenant insisted they did not know who WM is, and were dealing with YM as the landlord. They stated in the hearing that WM signed the final condition inspection report as YM in the tenant's presence. The name WM is not present in the copy of the tenancy agreement the tenant submitted.

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hearing that WM signed the final condition inspection report as YM in the tenant's presence. The name WM is not present in the copy of the tenancy agreement the tenant submitted.

The landlord WM described the situation as one where they were sub-letting to the tenant with YM's authorization. They provided identification to the tenant when starting the tenancy agreement process. This made clear to the tenant that YM is the owner, and for the purpose of this tenancy that is what was required by the tenant's insurer who was authorizing this tenancy where the tenant's own home was not available. To verify this, the landlord WM referred to a specific email (though not in the evidence) in which the tenant's insurer asked WM for their identification.

For the purposes of this dispute resolution, I am satisfied the landlord WM is here in their capacity as an agent for the landlord YM who is the actual owner. I have amended the hearing information to name both YM and WM as Applicants/Respondents in this matter. This is based on the abundance of information that shows the landlord WM was actively involved in the tenancy at each stage. My finding here is based on the *Act* s. 1 definition of "landlord", which includes ". . .the owner's agent or another person who, on behalf of the landlord. . .exercises powers and performs duties under this Act, [or] the tenancy agreement . . ." For this decision, the term "landlord" defines WM and/or YM for this whole decision.

parties' exchange of evidence

The matter initially proceeded to a hearing on May 3, 2021. In that hearing the landlord advised they did not receive evidence from the tenant. This was despite the tenant's assertion that they provided this to the landlord via registered mail, in two separate pieces in January and April 2021. This was to the landlord's Application address. I allowed an adjournment to ensure proper service by the tenant to the landlord. At that time, the landlord provided an address for service in the hearing. The tenant recorded that address, and I left the instruction for the tenant to forward their materials to the landlord at that address.

At the initial hearing, the tenant confirmed they received the landlord's Application. This included the landlord's evidence package.

The parties reconvened on September 2, 2021 with a different Arbitrator. That Arbitrator provided an Interim Decision dated September 10, 2021 wherein the Arbitrator recorded that the tenant stated they received on the Notice of Dispute, though not the landlord's prepared evidence. The landlord provided that they did not receive tenant evidence; the Arbitrator recorded that the landlord's lawyer did not accept service on their behalf.

That Arbitrator made the explicit instruction to each party to re-serve their evidence by registered mail. This requires proof they took this step at the second reconvened hearing scheduled for September 22, 2021. That Arbitrator advised that I as the original Arbitrator assigned was seized of the matter, and this matter, on further adjournment, returned to me. In their Interim Decision, that Arbitrator made no findings on the merits of either side's case.

With regard to each party's statements made in the September 22, 2021 hearing, I find as follows regarding service:

- Despite their objections to in-person and email service, the landlord confirmed they received the tenant's registered mail to their lawyer's office on September 15. The tenant did provide a tracking number for this purpose. I find as fact this service was completed by the tenant by registered mail and the landlord received the tenant's evidence package. Alternatively, by s. 90(a) of the *Act*, I deem the registered mail received by the landlord on September 14.
- The tenant confirmed they received the landlord's evidence. As requested by the prior Arbitrator, the landlord provided a registered mail tracking number. I find the tenant confirmed receipt of the landlord's evidence. In the alternative, based on the landlord's account that they sent the registered mail on September 11, I deem the registered mail received by the tenant on September 16. This is deemed service as per s. 90(a) of the *Act*.

Issues to be Decided

Is the landlord entitled to monetary compensation for money owed and/or damage to the rental unit, pursuant to s. 67 of the Act?

Is the tenant entitled to a monetary order for the return of the security or pet damage deposit pursuant to s. 38(1)(c) of the *Act*?

Is the tenant entitled to monetary compensation for money owed, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for their Application, pursuant to s. 72 of the *Act*?

Is the tenant entitled to recover the filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

This tenancy started because the tenant's own home was unavailable due to fire. An insurance agency approved the tenant entering a tenancy agreement as a temporary measure while the insurance claim was being resolved. Jointly, the insurer and the tenant approached the landlord to rent the unit.

Both parties provided a copy of the tenancy agreement. This shows the basic terms: $8,500 rent per month, with a specific payment scheme set out for the first two months of the tenancy. The tenancy was for a fixed term, starting on September 15, 2020 and ending on December 15, 2020. The tenant paid a security deposit of $4,250 on August 31. An image of the initial rent and deposit payment is in the tenant's evidence.

A note on page 2 of the agreement states: "tenant pay as schedule as agreement, need one month prior notice of move out."

Extra terms accompanying the agreement were by the tenant. These terms include the following:

- at the end of tenancy, the painting must be the same as the original, and should be fresh smelling
- the landlord can use the security deposit to repair any appliances and other damages – the tenant needs to pay the balance that exceeds the security deposit
- the tenant agrees to "arrange and pay for the minor repairs or replacement up to $50 during the tenancy"
- the tenant agrees to return the property in its original condition "less normal wear and tear" – this may include professional painting, carpet cleaning and "move-out cleaning of the property"
- the tenant agrees to pay for all costs associated with returning the property to the condition in which it was received at the beginning of the tenancy.

i. the landlord's claim for monetary loss – further rent

In their submission, the landlord specified that the insurer and/or the tenant wanted the agreement to end in February or March 2021. This was based on the tenant identifying that their own home construction would not be completed until that time. The insurer informed the landlord they could only sign an agreement for 3 months each time.

In the hearing, the landlord presented that by October 2020 other potential tenants were making inquiries on the availability of the rental unit and indicated that if the tenant moved by mid-December they would enter. The landlord "rejected" these other parties, based on the information that the tenant here would need to stay through to February 2021.

According to the landlord the insurance agent notified them that the tenant would move out on December 15, 2020. Despite this, the landlord received a different message from the tenant, who stated they would continue to rent until the end of February. After this, the tenant then changed to a final date of December 15. To the landlord, this represents a loss of income for the following month rent amount of $9,500, from December 15th to January 15th. This is stated in the written submission provided by the landlord.

The landlord's claimed amount on their Application is $4,500. This represents what would be the rent for the remainder of December, from December 15th to 30th. This is a "[minimum] one month rent." This is based on insufficient and conflicting information from the tenant about ending the tenancy.

In response to this, the tenant stated the insurance agent was only inquiring whether the rental unit was available beyond December 15. On October 30, they notified the landlord that the tenancy will end on December 15. This is even more advance notice than the one-month requirement in the tenancy agreement.

The tenant's record on this is:

- an email from the insurer to the landlord dated October 30 in which the insurer states: "[The tenant has] decided to move out on December 15, 2020 as stated in their lease agreement with you. I was inquiring in case they wanted to extend it further."
- the landlord's response of the same date: "We confirm the lease will expiry [*sic*] in Dec 15th 2020. this is final confirmation." And: "We will not accept any change more, as we cancel another clients request. . . but as yours keep changing, so we lose that order for 1 year lease agreement."
- November 2 from the insurer to the landlord: '[The tenant] will let you know if [the tenant would] like to rent the house beyond December 15, 2020 . . . I only contacted you to see if it was available beyond December 15, 2020 if [the tenant] wanted to extend their stay."
- same date response from the landlord: "we [have notified the tenant] we will take back the house in Dec 15 th 2020 as agreement. and he also agree on that."

The landlord reiterated in the hearing that the tenant lied about the move-out date. They speculated on the tenant's motive for doing so as "only to cause trouble for us." They pointed to a text message in their evidence dated October 31 wherein the tenant stated:

> I never confirmed with you that I am moving out Dec 15. I told you that I will let you know once I decide. [The insurer] was only asking if the place was available after Dec 15. My lease is till December 15 and as a courtesy I told you that I will let you know in advance to give you more time. I will be confirming with you in very near future.

ii. the tenant's return of the security deposit and damages in the rental unit

The parties agree that they met on December 14 to inspect the unit. The tenant presented they had a text message from the landlord which set out what would happen at the move-out inspection meeting. According to the tenant there was no argument on the security deposit or its return, and they gave the key "willingly" to the landlord. The landlord said "no charge" with little conversation at that meeting. The tenant maintained that the only conversation had was to see whether they would be receiving a return cheque for the full security deposit amount on the 15th.

The tenant provided a *Proof of Service Tenant Forwarding Address* form to show they handed their forwarding address to the landlord on December 15, 2020. The landlord signed this form in the appropriate place where required to do so. This form contains the actual forwarding address on page 1.

The tenant also provided a copy of the *Condition Inspection Report* to show there were no notes on it, indicating no damage or other concerns in the rental unit. Another image of the first page bears the notation "carpet [illegible] shampoo → no charge." By contrast, the landlord's copy of the Condition Inspection Report bears the note: "three sink stuck when move out; landlord been forced to sign but landlord keep right to claim cleaning fee; carpet not clean no shampoo; house sink stuck". This copy bears the signature of the landlord.

In the hearing, the landlord responded to the tenant's version of events to say that the tenants lied. They had asked the landlord to come to the unit to inspect, and though they had not moved out on that date, they demanded the return of the deposit from the landlord. After this, the landlord was forced to sign the Condition Inspection Report without any indication that the unit was not cleaned. It is the landlord's position that, without the landlord's signature on the report indicating 'no charge', the tenant would not return the key and would not move out.

The landlord followed up with a message to the tenant on December 15. They advised the tenant they were forced to sign off for 'no charge', and they listed specific items that need

cleaning: the three sinks were stuck, and the carpet needed cleaning. They advised the tenant they would hire a cleaning company the following day, and "we need you [to] pay for that."

For this hearing, the landlord provided a photo showing hair removed from a sink drain, and three pictures showing the stairwell carpet that needed cleaning. These are stairwell images. The landlord also provided an invoice dated December 15, 2020, for $557.50. This is for "house cleaning and carpet shampoo cleaning." On their Application, the landlord indicated their claimed amount was $577.50.

On their own, the tenant also claims compensation for costs they incurred for ongoing repairs and maintenance during the tenancy. In 2021, after both parties had filed their Application, the tenant listed 9 items for which they referred to the verbal contract between the parties. This was for the tenant fixing deficiencies on their own around the house. This was only $50 per hour for work completed. This lists installation of two thermometers (receipts for the parts included, and 60 minutes labour), replacing 10 bulbs ($6.76 and $18.01 with receipts), and 7 other items totalling 10 hours labour. On their Application, the tenant provided a total piece for this claim of $491.20

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 s. 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 party making the claim 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.

Where applicable, this test governs my rationale in reaching a decision on each of the following sets of evidence set out above:

i. the landlord's claim for monetary loss – further rent

The tenancy agreement itself is clear on the fixed term ending December 15, 2020. The only provision governing an extension of that term is stated thus:

> At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term.

On my review of the evidence, I find the tenant did give such notice here. There were no contraindications in place from the tenant after to the one clear month before the end of the term on November 15, 2020. The text message the landlord presented in their evidence – dated October 31 set out above – occurred prior to November 15; moreover, on my review of that message I find it is not an indication or request from the tenant that they wished to continue. The abundance of messaging to the landlord was that the tenant was ending the tenancy on December 15th.

In this case, the testimony of the tenant bears out what is shown in the evidence. There is no credence to the landlord's statement that the tenant was lying to them. I find the landlord was under the mistaken impression that there was a possibility of the tenancy continuing; however, there is no messaging in place as evidence to confirm that belief.

With reference to the four criteria listed above, the landlord did not prove the tenant breached the *Act* or the tenancy agreement; therefore, there is no compensation to the landlord under this category. I dismiss this portion of the landlord's claim, without leave to re-apply.

ii. the tenant's return of the security deposit and damages in the rental unit

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an application for dispute resolution for a claim against any security deposit.

I find the evidence shows the tenant provided their forwarding address to the landlord on December 15. This is the document in the evidence titled *Proof of Service Tenant Forwarding Address* bearing the landlord's signature. The landlord thus properly made a claim against the security deposit within 15 days, filing their Application here on December 25.

This finding does not mean the landlord is entitled to any portion of the security deposit. There must be legitimacy to their claim for damages. I find there is not, based on what they presented as evidence and stated as testimony in the hearing.

The landlord's cleaning receipt is dated December 15, 2020. It is not indicated what the actual work completion date is. On that same day, the landlord advised the tenant that further cleaning was needed; this is the email message to the tenant wherein the landlord set out their thoughts about the final meeting. The landlord advised that they would hire a cleaning company the following day, which is December 16. It is unknown when the cleaning company attended for work. This is not a finding of fraud on the part of the landlord; however, it is an inconsistency that weakens the legitimacy of their claim.

Further, the proof of work needed is not in place in the landlord's evidence. They described three drains being stuck; however, there is a single image of one likely problem of a clogged drain. Similarly, the need for carpet cleaning throughout is not proven, with only three images of what appear to be stairs in place. Based on this evidence, the landlord has not shown the value of the damage or loss. In sum, the images provided do not match to the $557.50 amount indicated on the invoice. It appears there was more menial cleaning involved than that for which the landlord paid.

Based on this, I find it more likely than not that there was no identification of issues at the final inspection meeting. I find the tenant inquired about the return of the security deposit, and did not demand it, or withhold return of the key until the security deposit was returned. That is a simple assessment of credibility of either party's account of the situation in the hearing. I find the landlord made discoveries about the need for cleaning after the tenant had departed. To do this, the landlord properly filed an Application for compensation; however, my finding is that the true value of the claim is not proven.

I dismiss the landlord's claim for damages arising from the tenancy, without leave to reapply.

The tenant made their own claim for compensation for maintenance and repairs during the tenancy. With reference to the four points listed above, I find there is insufficient evidence to establish the value of the loss. There was no record of the need for work involved, dates of completion, nor is there an accurate calculation of the amount. The tenant in their email to the landlord described $50 per hour; however, the amount of their claim ($491.20) does not reflect the amount of hours listed. I find the tenant has not quantified their accounting; therefore, I make no award and dismiss this portion of the tenant's claim without leave to reapply.

In sum, the landlord complied with s. 38(1) to apply for compensation against the security deposit; however, I am dismissing that claim. I order the return of the full amount of the security deposit to the tenant. This is $4,250.

As the tenant is successful in this application, I find that the tenant is entitled to recover the $100.00 filing fee paid for this application. The landlord's claim for the filing fee of $100.00 is denied.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $4,350, as outlined above. I provide this Order to the tenant, and they must serve this Order to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be 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: October 15, 2021

Residential Tenancy Branch