Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

The landlord filed an application for Dispute Resolution (the "Application") on April 12, 2021 seeking an order to recover monetary loss for unpaid rent, and compensation for 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 October 12, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent for the landlord (hereinafter the "landlord") attended the hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. The landlord provided proof of this in the form of evidence they used email for this purpose, after receiving authorization from this office for them to do so. This shows email delivery to the tenant on April 22, 2021.

I accept the landlord's undisputed evidence that they sent their information to the tenant via email; this on a verified channel of communication between the parties for the entirety of the tenancy and sometime after. I accept they served notice of this hearing and their evidence in a manner complying with s. 71 of the *Act* and the hearing proceeded in the tenant's absence.

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 10, 2020. The tenancy started on August 3, 2020 for a fixed term ending on July 31, 2021. The monthly rent was $2,200 per month. The tenant paid a security deposit of $1,100. The relevant portions of the agreement relevant to this hearing are:

- para 8 re liquidated damages – if the tenant provides notice and does vacate before the end of any fixed term, “the tenant will pay to the landlord the sum of one-half month’s rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.”
- para 23 re cleaning – The tenant is. . . responsible for the final clean at the time of the move out.

The tenancy ended when the tenant made their request to do so on January 22, 2021. The tenant moved out on February 28, 2021 and the parties attended at the rental unit for a condition inspection meeting. The document from that meeting is in the landlord’s evidence. In the hearing, the landlord stated the tenant had agreed to the summary of the report that set out the condition of the unit; however, when it came to the landlord retaining the security deposit as contribution to amounts owing (of which includes the $11,000 for rent to the end of the fixed term), the tenant would not sign the report. This aspect of the final meeting caused the tenant to leave the meeting abruptly.

Because of this early end to the fixed-term tenancy, the landlord claims the $1,100 for liquidated damages as set out in the tenancy agreement.

Additionally, the landlord had their own lease elsewhere, and this early end to the fixed-term tenancy by the tenant here led to the landlord's having to break their own lease. This was so the landlord could move back into this rental unit. They did so on April 4, 2021. Because of this, the landlord asks for March rent ($2,200) and the 4 days of April rent ($293.33 as a portion of that month's full rent).

The landlord provided a written account of their efforts to assist the other landlord to find a new tenant. They did so by mid-March. They paid a "break lease fee" of $1,350 to their own landlord, this "in order to process a new prospective tenant."

The landlord here claims $315 as the cost of cleaning the rental unit at the end of the tenancy. In their evidence they provided a receipt showing this, as a "Move out clean of 1BR apartment" at $250, and a carpet clean in bedroom at $50. Adding 5% GST brings the total to $315. The landlord's "detailed notes" list "no damages" as of the tenant's final date; the sheet for the landlord to complete details on each room in the rental unit does not give detail for cleaning. In the hearing the landlord stated they did not complete the details on the sheet in this manner; their more immediate concern was in discussing the deposit amount with the tenant. The landlord described how the tenant just did not clean the unit by the end of the tenancy. The cleaning company normally retained by the landlord would not go ahead with the work if it were not necessary; in that scenario in other units in the past the cleaners do not charge for work if it is not necessary.

As noted above, the tenant did not attend the hearing. There is no provided documentation evidence from the tenant that presents any information that is contrary to that of the landlord presented here.

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 fixed term information, relevant clauses and security deposit amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* s. 45(2) sets out how a tenant may end a tenancy:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (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 tenant breached the fixed term tenancy agreement by advising the landlord of an end of tenancy that was some months ahead of the actual tenancy end date. The tenant advised of an early end of tenancy that was beyond thirty days; however, it was a fundamental breach of s. 45(2)(b) where it was earlier than the specified agreement date.

I find a remedy is in order where the tenant breached s. 45. I award the full month of March rent, for $2,200. The tenant's desire to end early put the landlord in a difficult spot financially and there was no evidence the tenant tried to remedy this by securing new tenants for the landlord or making other amends. Because the landlord was left handling their own separate lease matters and ended up out-of-pocket for assisting with their own lease, I also award the short amount of April rent to the landlord. This is $293.33. I am satisfied the landlord took adequate steps to mitigate the situation by choosing to move back into the rental unit left vacant by the tenant here.

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: ". . .the tenant will pay to the landlord the sum of one-half month's rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit."

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 tenant as a penalty. Moreover, this clause is specific that it is "liquidated damages . . .*for all costs associated with re-renting the rental unit*." The landlord here did not actually re-rent the unit, and instead moved back into the rental unit on their own. Strictly speaking this clause is tied – as stated – to the costs of re-renting the rental unit and that is what the parties agreed to. Despite having to pay their own separate lease costs for that other landlord to re-rent that other unit, that separate agreement cannot be linked back to the tenant here where the wording they agreed to is clear on "*all costs associated with re-renting the rental unit*." Though it cannot be strictly implied that they have a motive for doing so and are relying

on the specific clause in the tenancy agreement, the landlord here cannot recoup costs associated with their own separate tenancy from this tenant. Because of the situation where there were no actual costs incurred for re-renting the unit, I make no award to the landlord for liquidated damages.

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.

The landlord here did not meet the burden to show there was an actual need for cleaning within the unit. They explained the final meeting ended abruptly based on the tenant's disagreement with accounting; however, this does not preclude the landlord from providing proof of the actual state of the unit and the need for an additional cleaning expense. They have not shown the unit was *not* reasonably clean. The landlord's assertion that the cleaning service would not proceed if they felt it unnecessary is not ample evidence to show the actual need for cleaning. I make no award for this portion of the landlord's claim.

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 $2,493.33. After setting off the $1,100 security deposit amount, already retained by the landlord, there is a balance of $1,393.33. I am authorizing the landlord to keep the security deposit amount and award the balance of $1,393.33 as compensation to them.

Because they are successful in their application, I grant the $100 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 $1,493.33. The landlord is provided with this Order in the above terms and the landlord must serve this Order to the tenant as soon as possible. By s. 71 of the *Act,* I order that email service by the landlord is necessary, given the landlord's need for substituted service and no forwarding address from the tenant.

Should the tenant fail to comply with this Order, the landlord may file it in the Small Claims Division of the Provincial Court where it may 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 12, 2021

Residential Tenancy Branch