Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

Introduction

The landlord filed an Application for Dispute Resolution (the "tenant's Application") on April 15, 2021 seeking compensation for damages to the rental unit by the former tenants. Additionally, they requested a return of the cost of the filing fee for their application.

They provided notice of this hearing via registered mail sent on April 30, 2021 after they received the notice of this hearing on April 27, 2021. The tenant at the hearing confirmed receipt of this information and evidence provided by the landlord.

The tenants (hereinafter "tenant") filed their Application for Dispute Resolution on August 27, 2021, seeking the return of their security deposit, compensation for monetary loss, and the filing fee. They sent this to the landlord via registered mail at the landlord's business address via their agent, on September 17, 2021 after the Residential Tenancy Branch provided the notice on September 14.

While the landlord's agent (the "landlord") who was present in the hearing stated they had not received the evidence of the tenant, they acknowledged they had not been present at the business address for quite some time, and in all likelihood the material arrived without being forwarded to them when working remotely.

Based on this acknowledgement, I find the tenant served the information about this hearing, as well as their evidence, in due course as necessitated by the *Residential Tenancy Rules of*

Procedure. By s. 90(a) of the *Act*, I deem the material received by the landlord on September 20, 2021.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 19, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing.

Issues to be Decided

Is the landlord entitled to compensation for rental unit damage, 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*?

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to s. 38 of the *Act*?

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

Is the tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement. Both parties signed the agreement on February 22 and February 24, 2020 for the tenancy starting on March 15, 2020. The rent amount of $3,600 was due on the 1st of each month. The tenant paid the security deposit of $1,800 on February 24, 2020. The tenant was sub-letting the lower part of the rental unit.

The agreement specified a fixed-term end date of March 31, 2021. On this date, the parties attended at the rental unit for a move-out inspection meeting. This meeting is documented in a Condition Inspection Report provided by the tenant in their evidence. This lists: markings all over floor; bottom of stove, warped. One of the tenant's signature is in section Z of the document, to indicate they agree to "get quote and confirm cost for repair" of an amount deducted from the security deposit. This document also contains the tenant's forwarding address.

On October 9, 2021 the landlord completed a Monetary Order Worksheet. This amount claimed, combining "floor/stove repair" is $350. This amount changed from the landlord's original claim of $1,700. In their written statement, the landlord explained that a handyman visited and advised to replace the entire floor "as it cannot be repaired back to normal." This cost was $1,700. Because of the age of the house, the landlord did not want to claim for the entire replacement of the floor or its repair. The handyman advised they could sand down the floors and paint over it. This "will be ok enough even though [they] didn't recommend this option." The handyman quoted $350 for the cost of floor sanding and repair of the bottom over warming drawer.

The tenant responded to this issue on the kitchen floors to state the finish had "gone" by the time they initially moved in. They do take account for the ring-shaped stain on the floor; however, this is just a single "ring", and there was water staining already present when they moved in.

The landlord explained the bottom oven drawer was not opening or closing as it should, being warped. The tenant stated that drawer was always "sticky".

The tenant makes their crossclaim for the return of the security deposit. On their Application they indicated the landlord did not have permission to keep it, had the tenant's forwarding address, yet "kept it on bad faith on an empty claim of damages." The tenant feels this entitles them to double the amount of security deposit in return, as per the *Act*.

Additionally, the tenant claims for $100 per month over a ten-month timeframe for a total of $1,000. This is for the basement living room ceiling collapse, then taking 4 months to repair. Additionally, this for when the dishwasher "broke and took over 6 months to replace." This was a sub-tenant situation, with both issues in the basement affecting that living space. The tenant's claim is for $100 per month, for "loss of enjoyment and additional labour of missing an appliance for so long." The tenant submitted their emails on these issues to/from the landlord, and photos showing photos of the ceiling.

There is in the tenant's evidence their initial message to the landlord of the basement ceiling falling down, on May 20, 2020. This included photos, showing a matt spread out on the floor to catch falling debris. By June 17, the tenant was notifying the landlord of the need to show the house to new prospective sub-tenants, asking for a timeline on repairs. The landlord in response on the same day advised they received quotes for the ceiling, and the dishwasher replacement was being ordered.

The emails provided by the tenant show they asked the landlord on this dishwasher problem, with water not fully draining and “dishes aren’t fully getting cleaned.” By May 7, the landlord advised they would replace the dishwasher with a new one.

On August 4, the tenant inquired about a reduced rent for this ongoing problem. At this time, there was ongoing construction in the lower rental unit for the ceiling. The landlord’s agent explained the difficult situation the landlord was facing being out of the country. The tenant filed a dispute resolution proceeding with the Residential Tenancy Branch, then withdrawing when the new dishwasher arrived on the morning of October 9, 2020.

The landlord presented that the tenant was paying reduced rent during this time; however, at the same time they authorized other subtenants to move into that basement unit. They paid $5000 - $6000 to repair the ceiling and were not collecting the full rent from the tenant during this time. The landlord’s agent acknowledged delays because of all the things happening with the landlord overseas. They attempted to explain this to the tenant during that time. Ultimately, the landlord borrowed money to pay for the dishwasher.

Analysis

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.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The landlord did file a claim to use the security deposit against damages they discovered in the rental unit, by April 15, 2021. This is within the 15-day limit set out in the *Act*. This automatically precludes a double amount owing to the tenant.

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.

To determine an outstanding amount of compensation owing, I shall first determine accountability for any damage that stemmed from the tenancy, then I may make a determination of the amount of compensation that is due. If due, I shall deduct this from the held security deposit. I establish this value by a review of the evidence presented.

I find the Condition Inspection Report stands as proof that a conversation was had with the tenant regarding the state of the rental unit. This is why the tenant signed the document in section Z. This was without regard to an actual dollar amount at the time of the final meeting.

Upon receiving an estimate, the landlord here has reduced their claim from their initial assessment of floor replacement. The tenant in the hearing acknowledged the ring-shaped marking on the floor. Because of this, in addition to the tenant's section Z signature, I find there is some amount owing as compensation to the landlord.

The landlord has pared down their claim considerably. I find this is in line with the need for mitigation as set out in s. 7 of the *Act*. I find there is still the necessity for work on the floor; however, the landlord did not present a documented estimate. I award $200 for the need for this work that the tenant accepted in the hearing.

The landlord did not prove damage to the over warmer; therefore, there is no award for this piece of what they alleged was damage. The burden is on the landlord to prove this claim; however, they did not do so with tangible evidence.

For the tenant's claim, I find they have not shown that there was a breach of the landlord's duty to repair, as set out in s. 32 of the *Act*. An award for compensation would stem only from this sort of breach by the landlord. Further, I find the tenant has not shown the actual loss to them in terms of a "loss of enjoyment and additional labour of missing an appliance for so long." This is the space in the rental unit that the tenant had sub-let to other renters; I find there is no direct loss of enjoyment or additional labour to them when this was not their domicile. If the tenant was residing in that space, they did not present that as such in the hearing or in their evidence. They presented this would impact their ability to find a new sub-let arrangement in that space; I find this does not translate to a loss of enjoyment or additional labour to them. I dismiss this portion of the tenant's claim.

In sum, the landlord complied with the time limits to make their claim against the security deposit. I so order $200 reduced from the security deposit amount. This is an application of s. 72(2), granting an arbitrator the authority to make a deduction from the security deposit held by the landlord.

The security deposit amount held by the landlord is $1,800.00. From this amount, I deduct $200 as recompense to the landlord for floor repair. The landlord may keep this amount.

As the landlord was moderately successful in their Application, I find they are entitled to recover $50 of the filing fee they paid for this Application. I deny the tenant's claim for the filing fee of $100.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $ 1,550 as outlined above. I provide the tenant with this Order in the above terms, 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 this Order filed 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 29, 2021

Residential Tenancy Branch