Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNR, MNDCT, LRE, FFT
For the Landlord: MNR-DR, OPR-DR, MNDCL-S, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on October 8, 2021, seeking an order to cancel the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"). Additionally, they applied for compensation for money owed, a suspension of the Landlord's right to enter the rental unit, and reimbursement of the Application filing fee. The matter was scheduled to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 24, 2022.

The Landlord filed an Application for Dispute Resolution by direct request on October 13, 2021. They amended the Application on October 20. They seek an order of possession of the rental unit, to recover money for unpaid rent and other money owed, and their Application filing fee. Their Application was joined to the Tenant's because the Tenant's Application was already in place concerning this tenancy.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony.

Preliminary Matter – evidence disclosure

The Tenant stated they delivered notice of this hearing to the Landlord. The Landlord confirmed they received the notice, along with instruction sheets, via registered mail. This did not include the prepared evidence of the Tenant and the Landlord maintained they did not receive documents for that purpose from the Tenant.

The *Residential Tenancy Branch Rules of Procedure* cover the processes for serving an application and submitting and exchanging evidence. For an individual application (i.e., not in response to the other party's application), the applicant must within three days serve the Notice of Dispute Resolution and any other evidence submitted to the Residential Tenancy Branch. Rule 3.14 specifies that evidence should be submitted in a complete package with the Notice of Dispute Resolution. This must be received by the other party no less then 14 days before the hearing. Rule 3.17 gives an arbitrator discretion on whether to consider whether the evidence is new and relevant evidence that was not available at the time a party made the Application.

Here, the Tenant provided their material to the Residential Tenancy Branch on January 10, 2022. This is 13 days before the hearing. The Landlord states they did not receive the evidence from the Tenant. Applying Rule 3.17, I exclude this evidence from consideration: it was submitted less than 14 days prior to the hearing and not disclosed to the Landlord. This information was provided to the Tenant in the Dispute Resolution Fact Sheet on October 15, 2021, from the Residential Tenancy Branch, along with the Notice of Dispute Resolution.

The Landlord provided their evidence and their Application to the Tenant via registered mail. They provided proof of this in the form of a registered mail tracking number. Confirmation using that tracking number shows the item delivered on October 28, 2021.

Preliminary Matter – tenancy ended

In the hearing the Tenant confirmed they moved out from the rental unit on October 15, 2021. Effectively this cancels the issue of the validity of the 10-Day Notice, and the Landlord seeking an order of possession. The Tenant applied for conditions on the Landlord's entry into the unit. With the tenancy already ended this is no longer an issue requiring resolution. I dismiss these pieces from each party's Application, without leave to reapply.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to compensation for unpaid rent, and other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that the parties jointly signed on August 31, 2020. This was for the fixed-term tenancy starting on September 1, 2020 and set to end on August 31, 2021. By the time the tenancy ended, it was on a month-to-month basis as of September 1. The rent amount was set at $1,650, payable on the first day of each month. The Tenant paid a security deposit of $825 on August 9, 2020. The Tenant paid a pet damage deposit of $300 in March 2021.

Clause 14 of the standard-form tenancy agreement sets the obligation of the Tenant to notify the Landlord of an end of tenancy "by giving the landlord at least one month's written notice." Moreover: "A notice given the day before the rent is due in a given month extends the tenancy at the end of the following month."

The Landlord issued a One-Month Notice to End Tenancy for Cause; however, a copy of that document is not in their evidence. According to the Landlord, this was for the Tenant acquiring a second pet in September 2021, even after they first brought a pet for which they paid a deposit in March 2021. The Landlord considered this a breach of the tenancy agreement, and so on September 15, 2021 advised the Tenant of the end-of-tenancy date for the end of October 2021. The Tenant deemed this an incomplete and unsigned agreement that the Landlord posted and then removed.

In the hearing the Tenant stated they advised the Landlord they would be leaving on October 15, 2021. The image of this Facebook message to the Landlord, dated September 29, is in the Landlord's evidence. The Tenant stated:

> I wanted to let you know I will be accommodating your request for an October 15th move out date. I would like for you to keep my damage deposit as half months rent. There is no damage to the suite and [I] will leave it cleaner than when I arrived.

The Landlord presented that, subsequent to this, the Tenant did not pay rent for October 1st. They issued the 10-Day Notice on October 2, 2021. A copy of this document is in the

Landlord's evidence. They served this by attaching a copy to the door of the rental unit. A witness to this signed a Proof of Service document to attest to the same, and the Landlord provide a photo of the document attached to the rental unit door. According to the Landlord, the Tenant advised them on October 5 that they received the 10-Day Notice.

This document set the end-of-tenancy date for October 12. On page 2 of the document the Landlord noted the Tenant's failure to pay the $1,650 rent amount on October 1. The Landlord described the Tenant waiting until October 5 to notify the Landlord they received this document. In the hearing the Tenant advised October 5 was the deemed service date, 3 days after the Landlord posted the document on the rental unit door. On October 8 the Tenant then filed their Application to dispute the 10-Day Notice.

The parties agreed that the Tenant gave a forwarding address to the Landlord via Facebook on October 2, 2021. While the Landlord submitted the Tenant did not attend to inspect the condition of the rental unit, the Tenant stated there was no inspection at the start of the tenancy, nor at the end. According to the Landlord, the Tenant did not advise that they left, and did not return the keys.

The Landlord maintains that the Tenant did not pay rent for October 1st to 15th. They claim the full amount of the October 2021 rent, based on the Tenant's September 29 message to the Landlord stating their move-out date of October 15. On their initial Application, the amount claimed in line with the Order of Possession was $1,650.

On their October 20 amendment to the Application, the Landlord claims the amount of $1,330. This was "to add holding the damage deposit of $825, the pet deposit of $300. . .[i]n addition to the cleaning cost of $105 and for the damage to the toilet of an estimated $100."

The Landlord inspected the condition of the unit after the Tenant's departure. They put an estimate on the damaged toilet they discovered at $100, with a picture in the evidence of the toilet on October 16, 2021. Additionally, they hired a cleaning service who invoiced the Landlord for 3 hours of cleaning at $35 per hour, for the total of $105. The invoice listed items completed including garbage removal, floor deep cleaning, blinds and windows cleaning, washrooms deep cleaning, vents deep cleaning, and base board cleaning. In the hearing, the Landlord noted the particular issue of the cat litterbox, and garbage and food left in the kitchen.

The Tenant responded to these claims to say the toilet as it appears in the Landlord's evidence is not readily identifiable as that in the rental unit. Further, the Tenant maintains they did a full clean prior to their departure, having professional cleaning experience of their own. They left behind two items requiring removal: a little table, and a dresser.

The Tenant in their Application claims for the return of the security deposit ($825) and the pet damage deposit ($300). This is because “no damage was inflicted on the unit and no move in inspection was performed.”

The Tenant also claims for expenses incurred when they were “unlawfully forced . . .to move”. They claim $1,650 for moving expenses. They also claim $1,650 for “uninterrupted uses, intentional stress & loss of privacy-and security” for the period from September 13 to October 15.

In the hearing the Tenant provided more detail. The Landlord issued multiple notices to end the tenancy, none of which were in the legally correct format save for the 10-Day Notice issued on October 2. All of these efforts constitute an “unlawful eviction”.

Also, the Landlord did not provide proper notice to the Tenant when they wished to show the unit to potential new tenants. They requested proper official notice of visits from the Landlord; however, these turned out to be incomplete. The Landlord also issued one single notice to the Tenant for visits; this was intended to cover all visits within the following week. This led to the Tenant’s unsafe feeling.

In response, the Landlord acknowledged incorrect notices to end tenancy they issued. They had removed a posted notice, to change the date correctly and then re-posted that One-Month Notice to End Tenancy for Cause, related to the second pet issue.

Regarding the Landlord’s need to visit the rental unit to show it to potential tenants, they noted the Tenant did not provide messages about these visits in their evidence. Further, the Landlord used text/Facebook messages and the Tenant requested written notice. The Tenant made scheduling of Landlord visits to the rental unit more difficult when they insisted on being present for the Landlord’s visits with potential tenants. This “became a control issue for the Tenant”.

Analysis

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 sections 7 and 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 Landlord completed their Application for the full October 2021 rent amount, and then amended it thereafter to add the two deposits. On the amendment form, the Landlord stated "to add holding the damage deposit of $825, the pet deposit of $300 . . ." I find what the Landlord intended was to retain these deposits and offset them against the full amount of rent owed. I find this was an indication that they are *holding* those deposits and wish to apply them against an award for compensation. Stated thus, the Landlord's claim, more simply, is for the full October rent amount $1,650, and damage for $100, and cleaning for $105.

There is no copy in the evidence of a different notice to end the tenancy from the Landlord for some time in October. The Tenant indicated the Landlord issued a one-month notice, then altered the end-of-tenancy date. If issued on September 13 – as indicated by the Tenant in their Application – a proper one-month notice to end tenancy could only correctly indicate the end date of October 31, as per s. 47(2)(b) of the *Act*.

Following this, the Tenant advised the Landlord they would move from the rental unit on October 15. There was no legal obligation for the Tenant to leave on this date; I find they were aware of the correct legal end date of the tenancy. Their own Application states that the one-month notice was corrected and reposted on September 24. After this, on September 29, the Tenant notified they would move out on October 15. They maintained this move-out date and instructed the Landlord to use the deposits for the equivalent of one-half month's rent.

I find the Tenant did not provide the Landlord correct notice to end the tenancy, despite an erroneous notice from the Landlord. The Landlord then obviously dismissed the Tenant's assertion for the one-half month's rent, and instead issued the 10-Day Notice on October 2 when the Tenant did not pay full October rent. The Tenant's September 29 notice to the Landlord is not permitted with respect to the timeline involved. This is governed by s. 45(2):

> A tenant may end a periodic 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, and
> (b) 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.

This is the same information that appears in clause 14 of the agreement.

While the Tenant can say they were complying with the initial one-month notice issued by the Landlord in September and moving out on October 15, I find they were aware that specified date was incorrect, and they were aware that the tenancy should properly end on October 31. As such, I find this September 29 unilateral notice from the Tenant does not comply with s. 45(2) or the tenancy agreement. Moreover, being sent via Facebook, it is not in compliance with the requirements of form and content set out in s. 52, and thus not proper notice to end the tenancy as required by s. 45(4).

This means the Tenant was obligated to pay the full amount of October 2021 rent. This is $1,650 in total, and I grant that amount to the Landlord. This is based on the Tenant's notice not complying with the provision in the *Act* that governs this situation.

For the remainder of the Landlord's claim, what they presented as a need for cleaning and damage was not verified through an inspection process. With no evidence of a move-in or move-out inspection – with the opportunity for the Tenant's full participation – I accept the Tenant's testimony that neither of those events happened. The burden of proof is on the Landlord for these pieces. I find the invoice for cleaning they provided, and the image of a broken toilet are not sufficient to show that damage and cleaning were because of the Tenant.

Inspections are required at the start and end of a tenancy. The *Act* s. 24 sets out the need for an inspection, and a documented report at the start of a tenancy. It specifies that a landlord may not claim against a security deposit where they did not provide 2 opportunities for inspection. Similar to this, s. 36(2) sets out the same requirement for the end of the tenancy. I find these provisions apply in the present situation. The Landlord's right to claim against the security and pet damage deposits is extinguished because they did not meet these requirements. In conclusion, I find the Tenant is entitled to the return of the security deposit and pet damage deposit.

To examine the Tenant's claim for moving costs and money for uninterrupted use, stress and loss of privacy and security, I consider each piece with respect to the four points listed at the start of this section.

The Tenant claimed $1,650 for moving costs associated with the end of the tenancy. I find the Tenant has not quantified these pieces of their claim, and there is insufficient detail. There is no record of the Tenant paying for moving costs when they moved; therefore, it is not some

out-of-pocket expense for which they can be reimbursed. I dismiss this piece of the Tenant's claim without leave to reapply.

The Tenant added this same amount $1,650 for the stress associated with the final period of the tenancy, from September 13 to October 15. I am not satisfied of the actual stress, interruption to use and loss of privacy and security. I did not consider the Tenant's evidence for reasons of procedural fairness. Aside from that, the Tenant did not provide testimony that shows a sustained pattern of the Landlord breaching the *Act* to the extent that compensation is warranted. I am not satisfied of the value that would be the equivalent of one month rent. I dismiss this piece of the Tenant's claim without leave to reapply.

In sum, while the Tenant is entitled to the return of the full security deposit ($825) and the full pet damage deposit ($300), they are obligated to pay the Landlord for the October 2021 rent ($1650) in full.

The *Act* section s. 72(2) gives an arbitrator the authority to make a deduction from the deposits held by a landlord. The Landlord here has established a claim of $1,650. After setting off the deposits total of $1,125, there is a balance of $525. I am authorizing the Landlord to keep the security deposit amount and the pet damage deposit amount and award the balance of $525 as compensation for the October 2021 rent.

With each party being moderately successful in their respective claims, I make no award from one side to the other for the Application filing fee. The Application filing fee each paid is offset against the other, and I dismiss each party's claim for that fee.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $525 for monetary loss. I provide this Monetary Order to the Landlord in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with the 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: January 31, 2022

Residential Tenancy Branch