Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The Tenants (hereinafter the "Tenant") filed an Application for Dispute Resolution on June 10, 2021 seeking compensation for monetary loss and return of the security and pet damage deposits. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on December 9, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The Tenant and the agent for the Landlord (hereinafter the "Landlord") both attended the hearing and I provided each with the opportunity to present oral testimony. At the start of the hearing, each party advised they received the prepared evidence of the other. On this basis, I proceeded with the hearing as scheduled.

Issues to be Decided

Is the Tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security and/or pet damage deposit, pursuant to s. 38 of the *Act*?

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

Background and Evidence

The Landlord submitted a copy of the tenancy agreement. The Landlord in the hearing provided that they attempted to have the Tenant sign the agreement three times in person at their office; however, the Tenant did not attend to do that. The Landlord then reached out to have the Tenant sign the document digitally, but they did not receive a signed copy back from the Tenant. They provided the document via a service called "sent-a-sign", along with the initial Condition Inspection Report. The Condition Inspection Report, completed by the Landlord in advance of the Tenant's move in, was similarly not signed by the Tenant.

The copy that the Landlord provided shows the signature of the property management company, dated November 22, 2020. The rent amount was set at $1,195 for the tenancy that started on December 1, 2020 for the fixed term set to end on May 31, 2021. The agreement shows the Tenant paid a security deposit amount of $597.50 and a pet damage deposit amount of $597.50 on December 1, 2020.

The agreement contains a clause specific to ending the tenancy, stating the fixed term requires notice to end a tenancy as required under the *Residential Tenancy Act*. An addendum to the agreement also specifies that the Tenant "will give a minimum 30 days' notice when terminating contract." The addendum also sets a liquidated damages portion at $1,195 when "the tenant provides the landlord with notice . . . of an intention to breach this agreement and end the tenancy by vacating and does not vacate before the end of any fixed term..."

The Tenant advised the Landlord of the end of tenancy in May 2021 when they sent a letter to the Landlord advising of health issues prompting their move out of the rental unit. The Tenant maintains they did give the Landlord one month notice to end the tenancy.

The Landlord presented they received only one letter from the Tenant concerning the end of tenancy, this dated May 1, 2021. The Tenant provided a copy of that handwritten letter; this shows their forwarding address and request for the return of the deposits. The Tenant wrote: "We have every right to leave early due to the information we have already supplied."

The Tenant also provided a message to the Landlord dated May 8:

> As per previous conversations and letters we vacated, did the final walk through and moved out. We discussed the mold issue and my health and submitted a Doctors letter regarding this issue and nothing was done so we submitted our letter of vacate with 30 days notice. So you will not be receiving rent for May as we are not there. We expect to receive both deposits refunded.

A follow-up message from the Tenant to the Landlord dated May 15 contains the Tenant's statement: "I talked to public health, they said we could move the next week without giving notice as no one even bothered to make an effort to correct any of the issues we notified them about."

In their evidence the Tenant provided a copy of their letter dated January 28, 2021. In the hearing the Tenant stated that they felt this was their one-month notice to end the tenancy. They reiterated in the hearing that they did in fact give a one-month notice to the Landlord. This letter sets out they felt the Landlord broke the lease due to the state of the rental unit, and their requests for repairs or additional cleaning were met with no response from the Landlord. The Landlord was "not made aware of the mold", and the Tenant referred to the Landlord's request for a doctor's letter to show this was truly a problem that impacted the Tenant's health.

The Tenant's evidence also has a copy of a doctor's note dated January 28. The doctor stated: "[Their] asthma means that mould issues in [the rental unit] can worsen [their] breathing." The Tenant submitted a February 9 email from the Landlord's property management services stating they received this information from the Tenant.

The Tenant in the hearing confirmed they moved out by May 1. On April 27th, two real estate agents for the Landlord did a walk-through inspection with the Tenant present in the rental unit.

The Landlord maintains their own inspection without the Tenant took place on May 27th after the Tenant had moved out. After the May 27th inspection, the Landlord contacted the Tenant to instruct them that they owed rent for the month of May, and the liquidated damages fee as set out in the tenancy agreement. The Landlord submitted a copy of the Landlord-signed Condition Inspection Report, signed on May 27, 2021. The notation reads "move out – all items the same but didn't give proper notice 1195 for June rent." The Landlord also provided several sheets of pictures taken at the time the Tenants moved into the rental unit at the start of the tenancy.

The Tenant claims all of their deposits back, for the total amount of $1,195. As indicated by the notation on the May 27, 2021 Condition Inspection Report, the Landlord

feels this money is owing from the Tenants for rent not paid, due to improper notice of the tenancy's end. In the hearing the Landlord mentioned they were not sure if the Tenant had moved out. They did the inspection and informed the Tenant that they owed for one month of rent and the liquidated damages fee at the end.

The Tenant also claims $3,585. This is for February to April 2021 rent in full because they "did not do anything about the mold or maintenance but would not allow us to do anything", as written on the Tenant's prepared Monetary Order Worksheet. For their evidence on this point, the Tenant provided the following:

- A June 9, 2021 letter from the Tenant's sister sets out that they "were told the place was professionally cleaned" at the first walk-through meeting. They noted there were "a lot of repairs that needed to be done and we were told they would be done by their handymen." A repairman then visited, doing 4 or 5 repairs that were authorized. The Tenant's sister was also present at the move-out inspection and took more pictures of the mold "all along the beams of downstairs."
- A May 25, 2021 email from the property management firm to the Tenant, noting they received no request regarding mold or a doctor's notice. They had received a list of items to be repaired, though the Landlord's request for more information never received a reply from the Tenant.
- A February 8, 2021 email from the Landlord notes that they *had* received the doctor's note and the Tenant's "other stuff."
- Four pages from a notebook in the Tenant's own handwriting lists items for repair. These are noted for separate rooms in the rental unit.
- Rough handwritten notes listing items the Tenant wanted repaired.
- Twelve pages of notes with 31 separate photos of issues the Tenant identified in the rental unit.
- 40 pages of photos showing the unit at the move-in walkthrough.

The Tenant gave the summary of their experience in the hearing. By January 2021 nothing was done to address the concerns they raised with the Landlord concerning repairs or other deficiencies within the rental unit. The Landlord made them get a letter from a doctor to say they weren't lying about the presence of mould in the rental unit. Additionally, public health informed the Tenant that if the mould issue was not addressed, "they were entitled to move out right away." They provided that the property management staff was lying to the Landlord because the Landlord was stating they had not received anything.

The Tenant also clarified that they undertook a lot of cleaning on their own. The maintenance staff that did visit was confined only to what was provided on their work order.

In the hearing the Landlord provided that there were several repairs undertaken when the Tenant moved into the rental unit. From what their maintenance staff said there was no mould in the rental unit; rather, this was mistaken for dirt on the baseboards in the unfinished basement. They had sent the maintenance crew over to the rental unit in response to the Tenant's claims. They also confirmed they told the Tenant to get medical confirmation that mould was causing an issue, or to hire their own mould inspection service.

On their Monetary Order Worksheet, the Tenant added:

- $60 for "basic move-in cleaning, time and supplies", as an estimate
- $50.31, the "estimate for printing of pictures and information" for the hearing
- $40, gas for travelling back and forth for information, estimate.

The total amount indicated on the Tenant's worksheet, not including the return of the deposit, is $3,725.31.

Analysis

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, the Landlord must repay any security or pet damage deposit to a tenant or make an Application for Dispute Resolution for a claim against any deposit. In order for the Tenant to meet the requirement that they provided their forwarding address in writing, there must be proof that there was a written document with that information conveyed.

The *Act* s. 45(4) provides that a notice to end the tenancy, coming from a tenant, must comply with s. 52. The following s. 52 provides that the notice to end tenancy must be in writing and must state the effective date of the notice. That is a firm end-of-tenancy date.

I find the Tenant's note of January 28, 2021, provided in their evidence, is not an end-of-tenancy notice. The Tenant is setting out their position that the Landlord is the party that broke the tenancy agreement by lack of repair.

The letter dated May 1, 2021 contains the Tenant's forwarding address. This is dated May 1, 2021; however, in their submission the Tenant labelled this letter as "hand delivered to [agent] at the move-out walk through". According to the Tenant in the hearing, that walk-through was on April 27, 2021. The meeting date thus precedes the date on the letter, and it is unclear when the Tenant handed this information to the Landlord.

I find the Tenant did not give notification of their ending the tenancy as required by the *Act*. I accept the Landlord's position that they learned about the end-of-tenancy after the fact. On their Application, the Tenant provided April 30, 2021 as the tenancy-end date. This was not known to the Landlord. I find the Landlord only knew of the tenancy ending by May 8, as confirmed in the message to the Landlord from the Tenant on that date. While neither party provided firm evidence on this date, in this claim the onus is on the Tenant to prove their claim and they did not provide ample evidence to show they provided a firm end-of-tenancy date to the Landlord in an acceptable fashion.

For the return of the security deposit, I find the Landlord did not make a claim, or return the security deposit to the Tenant, within 15 days of neither the end of tenancy date becoming known to them (on May 8th), *nor* the Tenant's forwarding address known to them (on May 1st). The Landlord thus breached the s. 38(1) governing the security and pet damage deposits return.

Though the Landlord made indications to the Tenant that there was the matter of May rent, based on improper notice from the Tenant, the Landlord did not properly make a claim against the deposits. This applies to the claim for liquidated damages as well. These matters were known to the Landlord from May 2021; however, they did not act to claim against the deposits as required.

The *Act* s. 38(6) sets out that a landlord in this situation may not make a claim against the deposit; moreover, they must pay a tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. On this basis I award the Tenant double the amount of the full deposits they paid, that is for a total of $2,390.

The Tenant also claims $3,585, the total of three months' rent. I find the sole basis for this claim is the Landlord not doing anything to answer the Tenant's claim about mould or other maintenance within the rental unit. On their Monetary Order Worksheet, the Tenant termed this "rent retribution".

The *Act* s. 32 sets out a landlord's obligation to repair and maintain residential property. This is in a state that "complies with the health, safety and housing standards required by law."

Under s. 7 of the *Act*, a party who does not comply with the legislation or the 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 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.
5.

I make no award to the Tenant for any part of rent amounts they paid. This is for the following reasons:

- Though the Tenant provided a number of photos to show maintenance or repair issues, I find these do not show positively that damage or loss existed. The Tenant has not shown that these instances of non-repair or non-maintenance, as alleged, were a violation of health, safety or housing standards required by law. The doctor's note, provided at the request of the Landlord, does not show that any presence of mould was positively having an affect on the Tenant's health.
- The Tenant especially mentioned black mould; however, I find firm evidence of this does not exist.
- I accept the Landlord made efforts to address requests from the Tenant. The Tenant granted that maintenance staff did attend; however, that work was limited. I find the Tenant has not shown the Landlord violated the legislation and/or the tenancy agreement. The state of the rental unit was known to the Tenant when they moved in.
- The Tenant has not established how the Landlord's not responding to the issues equates to three months of full rent. There is no record of the Tenant not having access to any area of the rental unit, nor is there any account of services or

facilities denied or otherwise unavailable. The value of the damage or loss to the Tenant is thus not established.

- The Tenant has the ability to compel a Landlord to make repairs via the dispute resolution process. The Tenant here did not make an application for the Landlord's compliance with their obligation to repair and maintain. They did not apply for an order for repairs, after their attempts to ask for those repairs in writing. The Tenant did not take this important and legally valid step to mitigate any damage or loss to them.

The Tenant also claimed for gas money and preparation costs of paperwork for this hearing. The *Act* does not provide for recovery of other costs associated with producing or serving hearing document; therefore, these costs are not recoverable.

Because they were moderately successful in their Application, I award the Tenant one half of the filing fee amount. This is $50.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Tenant a monetary order for the amount of award listed above. This amount is $2,440.

The Tenant shall provide the Landlord with this Order in the above terms and they must serve the Landlord with this Order 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 can 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 5, 2022

Residential Tenancy Branch