Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on August 16, 2021 seeking an order to recover the money for unpaid rent and other money owing, and recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on February 25, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Both parties attended the telephone conference call hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. At the outset, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded as scheduled.

Preliminary Matter

Both parties were aware of the Tenant's separate Application, set for a hearing date in September 2022. That separate Application was not joined to the Landlord's Application here. Both parties submitted the Tenant's Application concerns the same tenancy and the same subject matter. The Landlord proposed joining the two Applications; however, I noted to both parties in the hearing that would entail an adjournment to allow for a proper hearing process with submissions and testimony.

For their Application, the Landlord presented email records showing they sent the notice for this hearing to the Tenant on September 3, 2021.

I find as fact that the Tenant was aware of the Landlord's Application by early September 2021. They chose to file their Application toward the end of January 2022.

This is some time after they were aware of the Landlord's Application, and closer to the actual hearing date here of February 25, 2022.

The *Residential Tenancy Branch Rules of Procedure*, particularly Rule 2.11, provides that "A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible . . ." I find the Tenant did not cross-apply in a timely fashion, and this did not allow the Residential Tenancy Branch to join the files. Joining files would have postponed the Landlord's own Application when they correctly filed it soon after the end of the tenancy. I decline to join the matters and further adjourn the Landlord's Application here; the Tenant's Application will be heard separately as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amount owing, 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 both parties agreed on the terms therein in the hearing. The parties signed the agreement on May 14, 2020 for the tenancy starting on that same day. The set fixed term was until May 31, 2021 at which point the parties agreed the Tenant would vacate, as specified by their initials on the agreement. The monthly rent amount was $2,300. The Tenant paid a security deposit amount of $1,150 on April 18, 2020.

The tenancy ended on July 31, 2021. This was after the parties could not agree on the terms of another agreement going forward after the expiry of the fixed-term agreement.

The parties met and reviewed the condition of the rental unit on August 2, 2021. The Tenant provided their forwarding address to the Landlord at that time. The Landlord outlined on the final Condition Inspection Report (the "report") two amounts: $118.76 for water utilities owed; and $180 for carpet cleaning. The Tenant provided their signature on the document to indicate they agreed to these deductions from the security deposit.

The Landlord also set out “some wall & baseboard damage” on the report; however, they did not set an amount for this on that document. On August 3, the Landlord text messaged to the Tenant to inquire on a further deduction from the security deposit. This was a $200 amount, and the Landlord included an image of that message in their evidence. The Tenant replied, at 2:46pm: “I spoke with [the co-tenant] and [they] said we can agree to that.” The Landlord for this hearing thus adds the $200 deduction to their claim, to retain that from the security deposit. In the hearing, the Tenant stated they were contesting this amount, to show the damages indicated by the Landlord are reasonable wear and tear. In response to this, the Landlord stated there was no confusion about that amount previously.

On the report, the Landlord also wrote that they were giving back $105 to the Tenant for previously paid hydro utility. On their worksheet, the Landlord subtracted this from their claimed amount.

The Tenant started the end-of-tenancy process In July 2021, by giving the Landlord a written notice. The Landlord provided a copy of the notice they received from the Tenant dated July 20, 2021. The Tenant stated their desire to end the tenancy for August 1, 2021. In that notice they stated this was “an attempt to come to a reasonable agreement with [the Landlord].”

The move-out report also contains the Landlord’s notation where they wrote that they “offered a solution on the spot but was declined pertaining to Aug 1 $2300 rent still owing because of improper notice given – difference of opinion.” In their claim, the Landlord adds the entirety of the August 2021 rent, for $2,300. This is based on insufficient timely notice from the Tenant, violating the *Act*.

The Landlord also provided an image of their text message to the Tenant of August 13 wherein they set out their position, in light of asking for a compromise whereby the Tenant would forego the rest of their security deposit. They stated to the Tenant that the tenancy, such as it existed at that later stage, was a month-to-month tenancy. Also, this was “The improper time of the -Notice to end Tenancy – given, gives me the right to have Augusts rent as well, by law.”

In the Tenant’s version, as set out in their formal written response, the Landlord was unclear at the outset on whether a family member would actually take over the rental unit at the end of the term. The discussion was that “2 months prior to end of term we would discuss if this was suitable and draft up another term if we both agreed to stay.”

The Tenant submitted they had no time to review their options at the start of the tenancy, “no real time to investigate our rights or options . . .”

The Tenant also set out that starting on March 5, 2021 they asked the Landlord what was happening with the property so they could make arrangements. They “had no clear answers” to their query, until April 1 when the Landlord informed the Tenant they were offered another one-year contract. The Tenant stated to the Landlord at that time that they preferred to be on a month-to-month basis. On May 31, 2021 the Landlord presented another last-minute agreement, providing for a shorter fixed term until August 31, 2021. The Landlord’s response to the Tenant’s concern was that they would provide ample notice to the Tenant should a sale of the rental unit become a reality.

The Tenant “started a discussion with [the Landlord] indicating we would like to move Aug 1st.” The Landlord replied that was not 30 days’ notice and requested a letter indicating the Tenant would be ending on August 31. The Tenant submits this was only because they refused to sign the further 3-month agreement offered by the Landlord. On July 19, the Tenant sent an email to the Landlord, and asked for confirmation on July 20.

Analysis

I find the parties reached an agreement on remaining utility amounts owing, and the carpet cleaning cost owing from the Tenant to the Landlord. Each amount, and the Tenant’s consent, is clearly indicated on the report. I so award the total combined amount of $298.76 to the Landlord.

Though the Tenant stated their disagreement with damage to walls and baseboard, I note two points. One, the Tenant indicated their agreement that the report “fairly represents the condition of the rental unit” and signed the report. Secondly, the Tenant agreed to the amount via text message to the Landlord on August 3, 2021. The wording is clear: “we can agree to that.” The Tenant did not present counter-evidence to show no damage to walls and baseboard, so the record shows only their agreement to the Landlord’s proffered amount. I so award the Landlord $200 for this portion of their claim.

I find the parties had a fixed-term tenancy agreement to May 31, 2021. There was some negotiation between the parties and though the Landlord attempted to have a new fixed-term tenancy agreement until August 31, the Tenant did not sign. Despite this, the

tenancy continued beyond May 31. The tenancy thus did not end at the end of the fixed term, and the parties did not enter into a new tenancy agreement. I find the tenancy agreement automatically continued as a month-to-month tenancy agreement on the same terms.

After this, the Tenant chose to end the tenancy. The provision setting out how a tenant may end a month-to-month tenancy is s. 45(1). They may give a landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I find the evidence is clear that the Tenant provided their notice on July 20, and they indicated the effective end-of-tenancy date was August 1, 2021.

Under the *Act* and the tenancy agreement, the Tenant was obligated to give notice to end the tenancy for an effective date in line with s. 45(1). I accept the evidence before me that the Tenant did not do so. Both the lack of notifying the Landlord in the proper time, and the following non-payment of rent are breaches of the *Act*. The Landlord's loss results from this breach; therefore, I find the Landlord is entitled to the full amount of August rent. This is $2,300.

As indicated on the report, the Landlord was owing $105 to the Tenant for a separate utility amount. The Landlord provided for this on their claim worksheet. I so factor this in and reduce the award to the Landlord by this amount.

Because they were successful in their claim, I grant the Landlord reimbursement of the $100 Application filing fee. The sum total of the award to the Landlord is $2,793.76.

The *Act* section 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 $2,793.76. After setting off the security deposit amount of $1,150, there is a balance of $1,643.76. I am authorizing the landlord to keep the security deposit amount and award the balance of $1,643.76.

Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of $1,643.76. I provide the Landlord with this Order, and they must serve this

Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with 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: March 10, 2022

Residential Tenancy Branch