Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on August 16, 2021 seeking compensation for damages to the rental unit, unpaid rent, and other money owed. Additionally, they seek reimbursement 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 March 1, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance; on this basis the hearing proceeded as scheduled.

Preliminary Matter – hearing conduct

The parties fundamentally disagreed on several of the finer details at issue. At the outset of the hearing, I asked the parties for no interruptions, and verified that I would always check with the other party for a response to what they heard from the other. I informed them I was taking notes during the hearing, and there would be frequent pauses throughout while I was writing material down.

Despite this, the parties continually opted to directly question each other and did not make the effort to listen respectfully before being prompted to respond. This continued through the duration of the hearing and approximately halfway through the 51-minute hearing I asked the parties to stop arguing. While paused for my notetaking, direct questions followed to the other, and I reminded the parties to wait patiently. The hearing ended abruptly, with the parties refusing to accede to my instructions to stop arguing about the matter. I hold both parties

responsible for this behaviour which impacted my ability to verify statements made before proceeding to hear the other's response to that testimony.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, unpaid rent, and/or 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 and both parties in the hearing confirmed the basic details. The tenancy started on March 15, 2021 as stated in that document. The Tenant took some issue with their signing the agreement digitally, and never receiving a completed copy from the Landlord despite their requests. The rent amount of $2,550 did not increase during the tenancy. The Tenant paid a security deposit of $1,275. The Landlord confirmed with a previous agent that the Tenant did not pay a pet damage deposit amount.

The Landlord also pointed to specific terms in the agreement 4-page addendum. This provides for a liquidated damages sum of "$1,275 + tax", that "will be paid by the Tenant to the landlord as damages, not as a penalty, to cover the administration costs of re-renting the rental unit." This applies, as per the addendum, where the Tenant ends the tenancy before the end of the fixed term, or with "improper or inadequate notice to vacate as per the Residential Tenancy Act."

The Landlord also pointed to the specific clause where the Tenant "Will have the carpets professionally cleaned when vacating the premises." That clause specifies that the Tenant will present a receipt, else the Landlord will have the carpets cleaned with the cost to come out of the "damage deposit."

At the start of the tenancy, the Tenant met with the different property manager who managed the unit at that time. The Tenant noted concerns in that meeting, and there was no follow-up from the Landlord on their requests for repairs.

The tenancy ended after the Landlord issued a notice to end the tenancy based on the repeated late rent payments from the Tenant. This set the final-end date for July 12. The Tenant, in their account, described offering to mutually end the tenancy after this; however, the Landlord refused this. The final date of the tenancy was set for August 1, 2021. The Tenant advised the Landlord of this date in their email dated July 12, 2021. The Tenant described making the effort to assist the Landlord in obtaining new renters as quickly as possible. This involved posting ads online and forwarding the Landlord's contact information to interested parties. The Tenant described the non-cooperation from the Landlord on this, being a "failure to book, re-book, schedule, or reply to tenant prospects."

The parties met on August 4, 2021 at the rental unit to review its condition. On the Condition Inspection Report the Landlord listed: carpets not cleaned; cost of painting/damage – drywall; August rent owing. The Tenant indicated they did not agree that the report represented the condition of the rental unit. They wrote that they would dispute the August rent, this "due to lack of properly advertising/showing unit."

The Condition Inspection Report indicates the Tenant signed to agree to the $1,275 liquidation damages, with their signature appearing in that space. The report also bears the Tenant's forwarding address. That same day, the Tenant emailed to the Landlord to clarify they "[did] not give [the Landlord] any permission to withhold my security deposit without properly going through the dispute process."

The Landlord obtained new tenants for the rental unit. These parties signed their agreement on August 5 for the tenancy starting on September 1. This is shown in the Landlord's evidence.

The Landlord submitted a Monetary Order Worksheet they completed on August 16, 2021. This was superseded by that completed on October 19, 2021.

The Landlord's claim is as follows:

#	Items	$ claim
1	painting suite walls	1,115.94
2	carpet cleaning	415.89
3	liquidated damages	1,275.00
4	August 2021 rent amount	2,550.00
	Total	**5,356.83**

I reviewed these individual pieces of the claim in detail with the parties in the hearing. The Landlord presented their invoices, their photos, and gave a description of their rationale for claiming these amounts from the Tenant. The Tenant responded to the points raised by the Landlord.

1 The Landlord claims this amount based on their assessment of the rental unit at the final inspection meeting on August 4. The Condition Inspection Report records nails in wall in different rooms in the rental unit. There is also "damage to drywall".

The Landlord presented their receipt for the work completed on September 30, 2021. This shows painting for entire walls throughout the unit, caulking, and minor drywall repairs for "gouges". The base amount for work labelled as "repair" was $840, and the materials (not described) were $222.80. In the hearing, the Landlord noted this invoice "took into account the patching done by the Tenant".

The Landlord also presented photos (23.0 through to 23.10) showing miscellaneous holes in the wall. Some of the images show the holes made next to TV outlets.

The Tenant fundamentally objects to the imposition of these expenses to them because they raised a number of issues with the condition of the rental unit when the tenancy started. They provided proof of these "charges for repairs that previous tenants should have been responsible for" in their letter to the previous property manager. Also, there were "builder deficiencies" there since the structure was constructed.

The Tenant listed their objections on the Landlord's invoice, noting the date of September 30 was 30 days after the new tenants moved in. On that invoice, they noted "previous tenant" for holes in the living walls requiring patching and repainting. The Condition Inspection Report for the initial inspection notes "marks" and "minor marks" and "nails" and "4 recent TV holes".

The Tenant also provided their communication to the then-property manager dated May 10, 2021. They noted to that property manager that on the day prior to their move into the unit, "it was agreed that a painter would come back and fix the marks on the walls." There was no arrangement for this from the then-property manager.

Further, the Tenant proposed fixing these defects on their own before the tenancy ended; however, the Landlord would not consent to this. This is shown in their email to the Landlord on July 13, 2021 where they stated: "I have also taken it upon myself to

pre fill previous damages, (that I was waiting for paint) so I don't mind continuing to do that in helping with the process."

2 The Landlord presented that the addendum specifically includes a clause stating the Tenant agrees to having the carpets professionally cleaned when vacating the premises. The included invoice of September 3, 2021 is in their evidence, showing the $415.89 amount they paid.

The Condition Inspection Report notes specifically "carpets not cleaned".

In their written submission, the Tenant included their own communication to the Landlord of July 30, 2021, when they stated the carpets were in "good original condition" and they "don't plan on having them professionally cleaned." They referred to their previous discussion with the prior property manager. Additionally, they questioned why the Landlord had carpets cleaned on September 3 (as shown on the invoice), prior to wall repairs.

The Tenant included an excerpt from some Residential Tenancy Branch material, not identified, to show that carpet cleaning is required from a tenant only when the tenancy lasted longer than one year – which was not the case here.

3 The Condition Inspection Report indicates the Tenant signed to agree to the $1,275 liquidated damages, with their signature appearing in that space. The Tenant made it clear in a follow-up email to the Landlord that they did not agree to any deductions or keeping of the security deposit by the Landlord.

The Landlord informed the Tenant about the fee "owed for breaking your lease early" in their email response of July 12, 2021.

4 The Landlord claims this amount for August 2021 rent. This is due to not having tenants ready-and-waiting for an August 1 move into the rental unit. Additionally, the Tenant only provided 2 weeks notice that they were vacating the rental unit, thus breaching the *Act* and the tenancy agreement.

The Landlord obtained new tenants for the rental unit. These parties signed their agreement on August 5 for the tenancy start of September 1. The Tenant questioned why those tenants would not move into the rental unit earlier in mid-August, as opposed to September 1. From the Tenant's perspective, this formed the basis for the Landlord asking the entirety of the August rent amount from the Tenant.

In both parties' evidence is the message from the Tenant dated July 11, 2021. The Tenant stated: "I was to leave the property as of July 12th 2021, as per the notice I was served last week." They noted they have obtained another living arrangement elsewhere. The Tenant gave July 31st as the date by which they would vacate the rental unit.

The following morning, at 8:18am, the Tenant advised the move out date will be August 1, 2021. The Landlord advised they would not sign a mutual agreement with the Tenant.

The Tenant objects to this piece of the Landlord's claim because they made significant efforts to assist the Landlord in securing new tenants for August 2021. The Tenant included online ads, made by the Landlord in what the Tenant refers to as the incorrect geographical area, limiting the amount of potential interested parties automatically. The Tenant also provided copies of Facebook messages to the Landlord, directly from interested parties who received no reply from the Landlord. The Tenant submits these are parties that they directed to the Landlord independently of the Landlord's marketing efforts; however, there was no response from the Landlord to interested parties. Each of the messages shows a response from the Landlord directing the parties to the Craigslist ad to set up a showing time.

Analysis

I find the parties had a fixed-term tenancy agreement in place to February 22, 2022. The Tenant seeking to end the tenancy early does not nullify the binding terms of this agreement.

The provision in the *Act* setting out how a tenant may end a fixed-term tenancy is s. 45(2). A tenant 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, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

I find as follows, in regard to each separate item listed above:

1 I find the Tenant adequately explained a good proportion of the holes left in the walls in the rental unit. I find it clear from the evidence that the holes were in place at the start of the tenancy, leftover from previous tenants and rectified neither by the previous property manager, nor the Landlord here. I find this absolves the Tenant from paying for a certain portion of the work entailed with correcting those flaws. They have shown they raised this as an issue at the very start of their tenancy.

The Tenant highlighted and filled in commentary on the invoice as it appears in their evidence (section 4, page 18). I find the Tenant credible on their point that there were builder deficiencies in place as well. The Tenant provided video of the rental unit at the end of the tenancy; however, I gave these no viewing or consideration because the Tenant submitted them on the day of this hearing, in violation of the *Residential Tenancy Branch Rules of Procedure*.

Other than that, I refer to the Landlord evidence showing the need for work on the walls due to gouges, crayon markings, and patches of drywall missing. I take this into account and find $600 is adequate coverage, based on the September 30 invoice. Materials I grant in the same proportion, for $160. I grant $760 total to the Landlord for work on walls involving painting and drywall repair. This is for work beyond reasonable wear and tear at the end of this tenancy.

2 I find the agreement was clear that the Tenant was obligated to have the carpets cleaned at the end of the tenancy. The Tenant did not present evidence they completed this on their own. I find they flatly stated to the Landlord that they would not complete this. The agreement is set in place, and the Tenant signed the addendum, meaning there are obligations in place. This included cleaning the carpet that the Tenant did not accomplish. The carpets, if left unclean at the start of this tenancy from prior tenants,

do not negate this obligation of the Tenant. I so award the Landlord $415.89 for this piece of their claim.

3 The Residential Tenancy Branch has a set of *Residential Tenancy Policy Guidelines*. These are in place to provide a statement of the policy intent of the *Act*. On Liquidated Damages, Policy Guideline 4 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: "In any event, the sum of $1275.00 + tax will be paid by the tenant to the landlord as damages, not as a penalty, to cover the administration costs of re-renting the rental unit." This is specific to either the case when the tenant ends the fixed-term tenancy early, or when they give "improper or inadequate notice to vacate".

I find a framework for the clause – as set out above – is not in place. The clause appears arbitrary and is not a genuine pre-estimate of loss. That is to say, the costs of each of advertising, interviewing, administration and re-renting are not established.

In sum, I find the liquidated damages clause is invalid in that it is punitive in nature. In line with the four points set out above, I find the true value of a loss involving re-renting the unit is not established, and this arbitrary one-half rent amount (i.e., the security deposit amount) is not an effort at mitigating the monetary loss.

For these reasons, I make no award for this amount it sets out.

4 In this case, I find the evidence is clear that the Tenant provided their notice to the Landlord on July 11, 2021. The Tenant then left on August 1, 2021.

Evidently the Landlord issued a notice to end tenancy to the Tenant and that gave the final end-of-tenancy date as July 12. The communication shows the Tenant messaging the Landlord the day before that date to specify they would only be leaving at the end of the month. This shifted to August 1 by the following morning in another message from the Tenant. I find this is the Tenant trying to unilaterally control the ending of the tenancy, and not obtaining the Landlord's consent for that.

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(2). This was after they did not comply with the end-of-tenancy date the Landlord gave of July 12. I accept the

evidence before me that the Tenant here did not advise the Landlord of the ending for a valid effective date. This was not at least 30 days' notice, and with no regard to the end of the fixed-term tenancy. The July 31-August 1 date did not satisfy the imperatives set in s. 45(2). Both the incorrect end-of-tenancy date and the following non-payment of August 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 $2,550.

I grant the Landlord the full amount of August 2021 rent. At the basic level, the Tenant provided inadequate notice to end the tenancy on July 11, 2021. The Landlord was not obligated to complete the mutual agreement as the Tenant proposed. Overriding the consideration of doing that is the fact there was a fixed-term tenancy in place. That comes with legal obligations.

I appreciate the Landlord followed a set procedure to obtain new tenants. I noticed nothing amiss in the Landlord's responses to interested parties by directing them to register for a viewing via Craigslist. I find this did not delay or foil the Tenant's practically last-minute efforts to assist with securing new tenants, as the Tenant alleged in their submissions. With this very late notice from the Tenant, the Landlord could only secure new tenants for September 1.

In total, I find the Landlord has established a claim of $3,725.89. This is based on a review of the available evidence and the parties' testimony.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit and/or pet damage deposit held by a landlord. The Landlord here has established a claim of $3,725.89. After setting off the security deposit $1,275, there is a balance of $2,450.89. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and award the balance of $2,450.89 as compensation for the rental unit damage claim.

Because the Landlord was for the most part successful in their claim, I find they are eligible for reimbursement of the Application filing fee. I add this $100 fee to the Monetary Order.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of $2,550.89 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the

Monetary Order, the Landlord may file it 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: March 16, 2022

Residential Tenancy Branch