Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on September 2, 2021 seeking compensation for 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 17, 2022.

On September 22, 2021 the Tenant applied for the return of the security deposit they paid to the Landlord at the start of the tenancy, and the filing fee. The Tenant filed this as a Direct Request; however, this Application could not be considered by that method when there was a prior extant request from the Landlord in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 17, 2022. Both parties attended the teleconference hearing. At the outset, each party confirmed they received prepared documentary evidence from the other; on this basis the hearing proceeded at the scheduled time.

Issues to be Decided

Is the Landlord entitled to compensation for damages for money owed from this tenancy, 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. This tenancy started on April 1, 2021 after both parties signed the agreement on March 2 and March 3, 2021. The tenancy was for a fixed term to end on March 31, 2022. The rent amount of $1,990 did not increase during the tenancy. The Tenant paid a security deposit of $995.

In the hearing, the Landlord provided that they received a notification from the Tenant on July 31 that they wished to end the tenancy. They reminded the Tenant of the fixed-term one-year lease and did not accept the Tenant's notice. According to the Tenant, the Landlord called and advised they would let the Tenant out from the tenancy agreement if the Tenant would find new tenants.

The Tenant had provided the names of some prospective new tenant applicants to the Landlord. An email attesting to this appears in the Tenant's evidence, dated August 4. By August 10, a new tenant had signed an agreement with the Landlord for a tenancy starting on September 1. The Tenant noted they advertised, interviewed prospective tenants, and advised the Landlord of all tenant candidates. In their written response to the Landlord's claim, the Tenant noted: "I have done everything possible to successfully bring the time the landlord had to spend replacing us as tenants to an absolute minimum, as well as returned the unit in great condition."

The final date of the tenancy was August 31, and the parties met together in the rental unit on that date. The parties met and inspected the rental unit. With no issues of note, the Landlord provided on the Condition Inspection Report that "condition of unit is as move in condition, no physical damage."

Also on the Condition Inspection Report, the Landlord noted: "Return of damage deposits not final as per landlord costs/time to replace tenant. Tenancy board to determine amount owed to landlord." The Tenant provided their notation on the document in the same area, writing they "do not agree to any deductions from the damage deposit." The Tenant provided their forwarding address to the Landlord by email, forwarding the signed form for this purpose on August 20, 2021.

In the hearing the Landlord, who lives in a different province, stated they had to make two trips to the city where the Tenant resided. The Landlord applied against the security deposit for their time, and their costs associated with replacing the Tenant here,

because they left after only 5 months of the 12-month tenancy. This is "time as property manager at $35/hr, a contractor rate of $80/hr to replace a light and shelves and monetary loss due to travel and move in move out fee owed to Strata."

The Landlord submitted a Monetary Order Worksheet they completed on September 2, 2021.

The Landlord's claim is as follows:

#	Items	$ claim
1	return flight ticket	361.46
2	uber to airport	45.61
3	property management fees	
	• initially meeting with prospective tenant	17.50
	• lease paperwork preparation	8.75
	• lease signing/walkthrough	35.00
	• replace light and shelves	40.00
	• move-out fee paid to strata	100.00
	• communication time with existing tenant	70.00
	• transit	10.00
	• move-in walkthrough with new tenant	35.00
	Total	**723.32**

I reviewed individual pieces of the claim in detail with the parties in the hearing. The Landlord provided in their evidence a receipt for their air travel, and a receipt for the airport uber.

Regarding the replacement of light and shelves in the rental unit, the Landlord stated these items were not up in the rental unit when the Tenant initially moved in at the start of the tenancy. They removed these at the start of the tenancy based on the Tenant's request; therefore, they had to install these items at the end of this tenancy. This was based on a contractor rate of $80 per hour.

The Tenant questioned the imposition of the move-out fee paid to strata, stating there was no mention of this in the tenancy agreement, and they had no idea about this extra fee. The Landlord explained they did not charge the Tenant for a move-in fee, as a welcoming gift. Without the Tenant paying it at the end of the tenancy, this meant the Landlord would have incurred this cost 2 times from this tenancy.

The Landlord presented that they overall tried to keep costs as low as possible. This was a cheap flight. They had tried to negotiate with the Tenant about costs to them at the end of the tenancy; however, the Tenant would not agree to this. The Landlord included a document, untitled, purportedly a draft agreement not signed wherein they offered to keep $400 of the security deposit "for [their] time and efforts."

The Tenant included in their evidence in relation to their own claim for the damage deposit an email to the Landlord from August 16, 2021. They stated their objection to the Landlord's proposal of $400, stating "meeting with a new tenant and filling out the tenancy agreement doesn't cost $400." Following this, on September 2, 2021 the Landlord advised the Tenant of their Application to the Residential Tenancy Branch. The Landlord again re-stated their offer of settling for $400.

Analysis

In any claim for compensation 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.

Nowhere in the *Act* are the costs for Landlord's travel and administrative work associated with a tenancy provided for. I find the Landlord has drawn a tenuous link between the Tenant ending the fixed-term agreement early, and administration costs to them. These are costs borne to them in any event, as being a property owner and a landlord managing a rental unit. I draw the distinction between monetary loss stemming directly from the Tenant breaching the *Act* by ending the tenancy early, such as loss of rental income, and business costs borne by the Landlord here. It is entirely the Landlord's own choice to manage a rental unit in a different province from where they live, requiring air travel to be there. That is aside from having an agent handle the administrative work associated with being a landlord for them. There was nothing precluding the Landlord for making a contract provision for liquidated damages in the event of an early end to the tenancy; however, that was not in place in the tenancy agreement here.

For this reason, I dismiss the portions of the Landlord's claim asking for travel costs, tenancy agreement signing and preparation, meeting with new tenants, and communication time with the Tenant here.

The Landlord included a cost for replacing a light and shelves in the rental unit. I find that does not result from damage or any breach of the *Act* or tenancy agreement by the Tenant. I dismiss that portion of the Landlord's claim for that reason.

Additionally, the Landlord included the cost of a move-out fee paid to the strata. I find this was unknown to the Tenant for the entirety of the tenancy. The Landlord did not show this was set out anywhere in documentation within the Tenant's knowledge. Additionally, the Landlord did not present strata material showing that such a move-out fee exists; therefore, I am not satisfied of its value. For this reason, I dismiss this portion of the Landlord's claim.

With each portion of the Landlord's claim dismissed, I grant no award to them for compensation stemming from this tenancy. Because they were not successful in their Application, I find they are not eligible for the Application filing fee.

To address the Tenant's claim for a return of the security deposit, I turn to the *Act* s. 38. This is the relevant portion regarding the return of the security deposit:

> (1) . . .within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing;
>
> The landlord must do one of the following:
>
> (c) repay. . .any security deposit. . .to the tenant. . .;
>
> (d) make an application for dispute resolution claiming against the security deposit. . .

Then s. 38(4) sets out that the Landlord may retain an amount from the deposit with either the Tenant's written agreement, or by a monetary order of this office. Where a landlord does not comply with subsection (1), they must pay a tenant double the amount, by s. 38(6).

In this hearing, I find the Tenant's forwarding address was within the Landlord's knowledge on August 20, 2021. I find the Landlord properly applied for dispute resolution within the 15 days as set out in the *Act* on September 2, 2021. They complied with subsection (1) set out above.

Above I found the Landlord does not have a valid monetary claim; therefore, they are not entitled to reimbursement against the security deposit. As such, they must return

the security deposit amount of $995 to the Tenant as per the *Act*. The Landlord established their claim within the 15-day time limit; therefore, the Tenant's claim for double the security deposit amount is denied.

As the Tenant was successful in their Application, I find they are entitled to recover the $100 Application filing fee.

Conclusion

Pursuant to s. 38 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,095.00 for the return of the security deposit, and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant 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 30, 2022

Residential Tenancy Branch