Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the "Application") on August 23, 2021 seeking compensation for damages to the rental unit, and unpaid rent. 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 April 4, 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.

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

Both parties provided a copy of the tenancy agreement and verified details therein. The tenancy started on October 16, 2020 after the parties jointly signed the agreement earlier in that calendar month. The agreement shows a fixed ending on October 15,

2021 with the tenancy continuing on a month-to-month basis after that. The Tenant paid $2,000 per month payable on the 15th each month. The rent amount included "use of pasture, horse stables and tack room". The Tenant paid a security deposit of $1,000 and a pet damage deposit of $1,000.

The Landlord included in their evidence a copy of the agreement's addendum, indicating "basic yard maintenance includes eves [*sic*] through [*sic*] cleaning, lawn mowing, garden weeding . . . is the obligation of the tenant during the term of this tenancy."

The tenancy ended after the Tenant notified the Landlord they would be leaving. The Tenant did not pay rent for July 15th, 2021; however, they then paid on July 18th. The Landlord referred to a "cryptic" notice from the Tenant on July 15th, understanding the Tenant's notice to refer to a 30-day timeframe, with the intended end-of-tenancy date being August 15th.

The July 15 message itself, appearing in the Landlord's evidence, is: "As per our conversation yesterday via text, here is [Tenant name]'s 30 days notice.". The Tenant also informed the Landlord in that message that "we have two people interested in leasing it from you."

The Landlord submits this was not sufficient notice from the Tenant, not being signed, and not properly indicating an end-of-tenancy date. The Tenant responded to this in the hearing to say their communication with the Landlord was via texts, and they thought email was sufficient for this purpose and the Landlord previously accepted emails as a mode of communication. The Tenant recalled that the Landlord was clear they would not accept an end to the tenancy earlier than the fixed term indicated in the tenancy agreement. They had tried to end the tenancy earlier; however, in this instance on July 15 they "consciously" did not pay rent so the Landlord would evict them and keep the deposits as that basic rent amount.

The Landlord had difficulty finding interested parties as prospective tenants because of the pasture, stables, and tack room. Once they omitted that information from their advertising, many parties inquired. Eventually they found a suitable party to move into the rental unit for August 18, leaving them for 3 days (i.e., from August 15 – 18) with no income from rent. On a prepared worksheet, the Landlord calculates the rent shortfall for 3 days to be $90.

Additionally, the Landlord claims the lost rent from the Tenant's own rent rate of $2,000 per month, minus that of the rent they received for *only* the home structure on the property (i.e., not the pasture or stables), at $1,850. This amounts to $300 for the two months that remained on the Tenant's original fixed-term lease. Combining these two elements on their initial Application, the Landlord provided the amount of $390.

The Landlord also provided a calculation for the shortfall of not having the pasture/stable space paid for with rent. This "differential is $4.84/day". Based on this, they calculated August 18 to 31 ($67.76), September 1 to 15 ($72.60), and September 15 to October 15 ($145.20). This total amount is $285.56. Plus, the 3 days of no rent income (here claimed at $193.56), the total amount of the Landlord's claim comes to be $478.62

At the end of the tenancy the Tenant did not authorize the Landlord to retain a portion of the security deposit for the purposes of covering any rent shortfall. The Landlord attempted to reach a solution with the Tenant on August 19, proposing to retain an amount from the deposit for this purpose. The Tenant did not accept this and in the hearing noted it was not their obligation to cover the rent amount for 3 days. They did forward a new prospective tenant contact information to the Landlord.

At the very end of the tenancy, the Landlord was expecting an inspection jointly between the parties on August 16. The Tenant tried to shift this date to the 12th. As a result, the parties did not meet together. The Landlord travelled to the rental unit on the 15th and "noticed only minor things", including the lack of yard care and the need for eaves to be cleaned out. The Landlord described how the Tenant had moved out to another jurisdiction before their scheduled move-out date and announced to the Landlord at one point that they would not be coming back just to water plants.

The Landlord claims for the cost of replacing plants that had died as a result of no water. These are two plants at $97 each, plus $27 for one plant of a different variety that was also damaged. They included the price of labour at $50 for two hours. In the Landlord's evidence are photos of the damaged plants, along with photos showing the price tag on replacement plants. This claimed amount total is $297.52.

The Tenant in the hearing presented that they would still head to the rental unit every three days but had presented to the Landlord that they would not drive one hour either way from their current location just to water plants. They knew of power lines under the soil area affecting one of the plants, having spoke to the Landlord about this previously. Additionally, they cited an earlier message from the Landlord wherein they informed the

Tenant that the plants looked really good. The Tenant in the hearing also mentioned the time of drought that occurred right at the effective end of this tenancy, making an adequate amount of water to be a challenge.

The Landlord retained the Condition Inspection Report from the start of the tenancy. Their notation on the document, occurring after the Tenant had moved out, noted their failure to "maintain the flower beds and shrubs and did not water adequately, particularly after moving their operation . . ."

The Landlord also claimed $100 for the eavestrough-cleanout. The Tenant stated they "never disputed the eaves" and acknowledged overlooking that detail when they moved out from the rental unit. To show this, the Landlord provided detailed photos of the state of the eavestroughs, as well as the process of cleaning them out.

Analysis

I find the parties had a fixed-term tenancy agreement in place to October 15, 2021. The Tenant seeking to end the tenancy early does not nullify the binding terms of this agreement.

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.

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.

In this case, I find the evidence is clear that the Tenant provided their notice to the Landlord in an indirect way on July 15, 2021. The Tenant then left on August 12, 2021. I accept the Tenant was going through a period of personal hardship during this time.

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 without regard to the end of the fixed-term tenancy as the law requires. The incorrect, early end-of-tenancy date provided by the Tenant is a breach of the *Act* by the Tenant. The Landlord underwent a loss as a result of this breach; therefore, I find the Landlord is entitled to compensation. I find the Landlord's calculated amount of $4.84 per day to be accurate – their loss was palpable from the reduction in rent amount they accepted going forward. The Tenant is liable for that amount through to the end of the tenancy.

I find the Landlord's evidence insufficient on the 3-day delay in moving a new tenant into the rental unit; therefore, I calculate the rate of $4.84 per day from August 15th forward through to October 15. In any event the Tenant was not occupying the rental unit at that time; therefore, they are not liable for any rent for that brief period. In line with the Landlord's daily rate, I award the Landlord $300.

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.

I find the damage to the plants, so claimed, does not arise from a breach of the *Act* or the tenancy agreement. The matter of watering these plants separately goes beyond normal yard care as specified in the tenancy agreement and there is no evidence it was a long-standing lack of care that led to the damage. More likely than not the area was undergoing an extreme hot weather situation. While citing the Tenant for not asking the neighbour for assistance on this, it is not known why the Landlord could not handle that on their own. I award the Landlord no money for alleged plant damage.

I find the Tenant accepted they did not adequately complete the work necessary to clean the eavestroughs. I find the amount of work at $100 is accurate given the hands-on work required for that task.

I find the Landlord spent an inordinate amount of time preparing for the hearing in order to settle up, essentially, rent amounts owing due to the Tenant's breach of the *Act*. I find the Landlord is eligible in this instance for reimbursement of the Application filing fee.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of $500. After setting off the security deposit $1,000, there is a balance of $500. I am authorizing the Landlord to keep the amount of $500 from the security deposit and return the balance of $500 to the Tenant. I grant a Monetary Order to the Tenant for this exact amount.

Conclusion

Pursuant to s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of $500 as payment of the remaining security deposit amount. 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: April 14, 2022

Residential Tenancy Branch