Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on September 9, 2021 seeking compensation for damages to the rental unit, 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 April 22, 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. The Tenant confirmed they received the Notice of this hearing and the prepared documentary evidence of the Landlord. The Tenant did not prepare documentary evidence for this hearing.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, 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 April 1, 2020 as stated in that document. The rent amount of $900 did not increase during the tenancy. The Tenant paid a security deposit of $450.

On the Application, the Landlord indicated that the final date of this tenancy was August 31, 2021. The Landlord claims for monetary relief for $900 of a one-month rent amount owing, for the month of September after the Tenant moved out with insufficient notice. They stated there was "no conversation for moving in September" and "there was no actual month given." On the Application, the Landlord provided that "The tenant did not give me a written notice before moving out. I was notified by the tenant by a text message that they are moving out on Sunday, August 29, 2021. Because they did not provide me a written notice, I was not able to have the basement rented out for the month of September."

The Landlord presented the copy of the agreement they had with the tenants who moved in after the Tenant here. This was to show that the following tenancy commenced on October 1, 2021. The Landlord did not present the text message they described in the Application.

In the hearing, the Tenant described how they needed to end the tenancy, and the Landlord stated to them that it had to be one month's notice in advance of the tenancy end date. On July 31, 2021 the Tenant told the Landlord that they would be moving, and "August would be the last month there". The Landlord said there was no need for a written notice from the Tenant to them, and the Tenant confirmed verbally to the Landlord that they would be out of the rental unit before September 1st.

The Tenant also described, as proof of their prior notification to the Landlord, that they had a bed delivered to the rental unit property in mid-August. They had a clear conversation with the Landlord about that delivery on its way. They also described how they sent a text to the Landlord on August 29 about moving out that evening. The Landlord did not have further questions with that at that time, so "it seemed the Landlord was aware that I was leaving." The Tenant queried hypothetically in the hearing: "if I tell you that I will be moving, would you simply say okay?" – this to prove logically the Landlord would not be unaware of the final end-date specified by the Tenant in conversation.

Regarding the alleged damage in the rental unit, the Landlord described how they were not satisfied with the condition of the rental unit upon reviewing it with the Tenant on that final day, August 29th. Their understanding was that after they filed for this dispute resolution hearing, on September 23 they sent all pieces of their evidence to the Tenant, only to have the Tenant state they were no longer interested in the deposit anymore. The Landlord described their efforts at painting and cleaning the rental unit during the long weekend in September.

The Tenant rebutted the Landlord's assertion over damages in the rental unit to query the amount necessary. On August 29, they were present with the Landlord who directed them on

further cleaning within the rental unit, to which they obliged. They noted, upon move-in, there were a lot of items left lacking and unrepaired. They reiterated there was no documentation over the condition of the rental unit at the start of the tenancy.

The Tenant also rebutted the Landlord's claim that they agreed to forego the return of the security deposit. The Tenant, during the hearing, read their message of September 13 at 8:30pm: ". . at this time I barely care about my deposit."

Analysis

The provision in the *Act* setting out how a tenant may end a periodic tenancy is s. 45(1). 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, and is the day before the day in the month that rent is payable under the tenancy agreement.

Here, neither the Tenant nor the Landlord provided a document record of the Tenant's notification that they wished to end the tenancy. The Tenant gave affirmed testimony that they had discussed the matter with the Landlord well in advance of the end-of-tenancy date, and provided that this discussion took place on July 31. The Landlord who presented in the hearing was not the party who had that discussion directly with the Tenant. In the Application, the Landlord alluded to a text message from the Tenant; however, they did not present that message. I find it more likely than not that the Tenant's version of events is correct, given that they were a direct party in the discussion and recalled the exact date when they informed the Landlord of the tenancy end date.

Though s. 45(4) specifies that a notice to end a tenancy must comply with s. 52 – which specifies such notice to be in writing – I find it more likely than not that the Landlord instructed the Tenant that such written notice was not necessary. I weigh the evidence of the Landlord as against that of the Tenant: here, the Tenant had direct recall of the discussion they had with the Landlord, and that person was not present in the hearing to state otherwise. I do not hold the Tenant to a strict standard of having their notification to the Landlord in writing – I find the Landlord instructed them otherwise; therefore, I find the Tenant gave sufficient notice with respect to the timeline involved. Additionally, the Landlord did not present a certain text message they state was the initial notice from the Tenant.

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 the Landlord had ample notice, and any lack of rent for September is not the because of the Tenant's notification to the Landlord. I award no amount to the Landlord for rent.

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 make no award to the Landlord for damage to the rental unit, for the following reasons:

- I find the Tenant did not waive their right to the return of the security deposit. The statement read by the Tenant in the hearing does not constitute an agreement for the Landlord to keep the security deposit.
- There is no evidence the Landlord conducted an inspection meeting at the start of the tenancy to establish the condition of the rental unit on the record. The Landlord similarly did not document the condition of the rental unit at the end of the tenancy. Such a record is necessary as per s. 38(5), and here the Landlord failed to meet the report requirements that are set out in s. 24 and s. 36.
- There is no evidence such as photos to show that they completed the work they did.
- With regard to the requirements of a party claiming for compensation, the Landlord has not established the value of the monetary loss to them, with no record of purchase of materials or hours of work completed.

In sum, the Landlord did not provide sufficient evidence of the start-of-tenancy state of the rental unit to compare it to when the Tenant left. I accept the testimony of the Tenant here as fact that they followed the Landlord's instructions for cleaning on the final day and heard nothing about the need for further work to be done.

In total, I find the Landlord has not established their claim for compensation. This is based on a review of the available evidence and the parties' testimony. I dismiss the entirety of the Landlord's Application, without leave to reapply. The Landlord must return the full amount of the security deposit to the Tenant.

Because the Landlord was not successful in their Application, I make no award for the Application filing fee.

Conclusion

Pursuant to s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of $450 for the return of the security deposit. 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 25, 2022

Residential Tenancy Branch