Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL
MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- The return of part or all of their security deposit.

This hearing dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the *Act* and two requests to Amend a Dispute Resolution Application (Amendments), seeking:

- Compensation for monetary loss or other money owed in the amount of $3,372.60;
- Compensation for repairing damage caused by the Tenant, their pets or their guests to the rental unit during the tenancy in the amount of $400.00;
- Recovery of the $100.00 filing fee; and
- Retention of the Tenant's $750.00 security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's partner J.R., and the Landlords', all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Rules of Procedure state that respondents must be served with a copy of the Application and Notice of Hearing. The Tenant testified that the Notice of Dispute Resolution Proceeding package (NODRP), which includes a copy of the Application and the Notice of Hearing, and their documentary evidence, was sent to the Landlord by registered mail within the required timelines. The Landlords acknowledged receipt and raised no concerns with regards to service date or method, however, they stated that they did not receive the one page document outlining rent paid between October 1, 2020, and June 1, 2021. As a result, I find that the Landlords were properly served with the Tenant's Application and documentary evidence in accordance with the *Act* and the Rules of Procedure, with the exception of the above noted document, which I have excluded from consideration.

Although the Tenant stated that they had also sent an Amendment to the Landlords by registered mail, changing their address, the Landlords denied receipt and the Tenant could not provide me with any corroboratory evidence regarding this service, such as a registered mail tracking number. As a result, I find that the Tenant did not properly serve the Landlords with an amendment and I have therefore not considered it in rendering this decision.

The Landlords testified that as the Tenant did not provide a forwarding address in writing, and the address listed for the Tenant in their own application was incomplete as the unit number was missing, they had difficulty serving the Tenant with their own NODRP and evidence. The Landlords stated that they sent the first registered mail package to the Tenant on July 27, 2021, at the address listed for the Tenant on the Tenant's Application. The Landlords provided me with the registered mail tracking number and stated that it was returned to sender due to an "addressing error". The Landlords stated that they went to the building to serve the Tenant in person, but the Tenant was not listed as a resident and the building manager advised them that they did not know anyone with the Tenant's name. The Landlords stated that they then called the Residential Tenancy Branch (the Branch) and were provided with an address for the Tenant's son, who was originally also listed as an applicant in the Tenant's Application. The Landlord stated that when they attempted to personally serve the Tenant's son C.F., C.F. refused service and C.F.'s grandparent attempted to assault them. As a result, the Landlords stated that the package was simply left for C.F. by the front door. The Landlords submitted photographic evidence of this interaction in support of this testimony.

The Landlords stated that they then sent the same package to C.F. by registered mail on August 14, 2021, and that although the Canada Post tracking website indicates that it was delivered on August 16, 2021, they ultimately received it back in the mail. They provided me with the registered mail tracking number and hypothesized that after delivery, it was returned by C.F. and or the Tenant, in an attempt to avoid service. The Landlords stated that they made repeated attempts to contact the Tenant to get their full address, including their unit number, but the Tenant never responded. The Landlords stated that it was not until the Tenant came to their house on December 22, 2021, looking for mail from immigration that they were able to personally serve the Tenant with their NODRP, Amendments, and documentary evidence. The Landlords stated that the Tenant also advised them of their unit number at that time.

Although it is clear that the Landlords did not serve the Tenant within the required time period set out under section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure, I am satisfied that this delay was the direct result of the Tenant's intentional or unintentional omission of their unit number when providing their address on their own Application and the fact that they did not provide the Landlords with their forwarding address in writing. I am satisfied that the Landlords sent the above noted documents to the Tenant by registered mail, which is a valid method of service under the *Act*, at the address listed by the Tenant in their own Application. Further to this, the Tenant does not deny that they were personally served with the above noted documents on December 22, 2022. As a result, I find that the Tenant was sufficiently served for the purposes of the *Act* on December 22, 2021, if not earlier served by registered mail, in accordance with section 71(2)(b) of the *Act*.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided by them.

Preliminary Matters

Although the Tenant's son C.F. was listed as an applicant in the Tenant's Application, and the parties agreed that C.F. resided in the rental unit with the Tenant, C.F. is not listed as a tenant under the tenancy agreement. As a result, I find that C.F. was an occupant of the rental unit, rather than a tenant, pursuant to section H of Policy

Guideline #13, and therefore has no rights or obligations under the *Act* or the tenancy agreement. I therefore remove C.F. as a named party to the disputes.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed in the amount of $12,000.00?

Are the Landlords entitled to compensation for monetary loss or other money owed in the amount of $3,372.60?

Are the Landlords entitled to compensation for repairing damage caused by the Tenant, their pets or their guests to the rental unit during the tenancy in the amount of $400.00?

Are the Landlords entitled to recovery of the $100.00 filing fee?

Are the Landlords entitled to retention of the Tenant's $750.00 security deposit?

Is the Tenant entitled to the return or all, part, double, or none of their security deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on October 1, 2020, and that the fixed-term was set to end on September 30, 2021. The parties agreed at the hearing that the tenancy ended on June 30, 2021, after the Tenant gave the Landlords notice on June 29, 2021, that they planned to end the tenancy the following day. The tenancy agreement states that rent in the amount of $1,500.00 is due on the first day of each month, and that a security deposit in the amount of $750.00 was required. At the hearing the parties agreed that the $750.00 security deposit was paid, and that at the end of the tenancy the Tenant agreed in writing via text message that the Landlords could retain the full amount of the security deposit for $600.00 in outstanding rent for June of 2021, and "any costs incurred" by the Landlords.

The parties agreed that although a move-in condition inspection was completed, no move-in condition inspection report was filled out or served on the Tenant by the Landlords. They also agreed that no move-out condition inspection or report were completed, although they disagreed about why. The Landlords stated that as the Tenant gave only 24 hours notice that they were ending the tenancy, they did not have much

time to schedule a move-out condition inspection. The Landlords stated that the Tenant advised them that they would be moving out on June 30, 2021, around noon but did not move out on time. The Landlords stated that by the time the Tenant had completed moving out, it was very late, and the Landlords were already asleep. As a result, the Landlords stated that no move-out condition inspection or report were completed. The Landlords stated that after they left, the Tenant would not respond to their messages and did not return the keys.

The Tenant stated that they never agreed to a date or time for the move-out condition inspection and that they were not served with a Notice of Final Opportunity to Schedule a Condition Inspection (#RTB-22). The Tenant also stated that they were informing the Landlords of how the move-out progress was going as the day progressed. The Tenant's partner stated that the following day the Tenant and one of the Landlords had a telephone conversation wherein the Landlord stated that they had inspected the rental unit, that everything was ok, and to bring back the keys, so they left the keys for the Landlords outside the rental unit with a note. The Landlords denied that this conversation occurred and reiterated that neither the keys nor the note were received. The parties agreed that the Tenant never provided a forwarding address in writing.

In their Applications the Tenant sought $12,750.00 from the Landlords broken down as follows:

- $12,000.00 in compensation for emotional distress, lost wages, termination or restriction of services or facilities, and an unlawful rent increase or unlawful attempted rent increase; and
- The return of their $750.00 security deposit.

The Tenant stated that due to inappropriate behavior from the Landlord, such as the advancement of sexual innuendos, and the disconnection of their alarm system, they felt emotionally distressed and unsafe, so they ended the tenancy to move in with their partner. When asked if the Tenant reported their safety concerns to the police, the Tenant and their partner stated that the Tenant did not. The Tenant and their partner stated that there were also other issues during the tenancy, such as loss of heat, a broken washing machine, a leak, continual issues with garbage, a restrictive guest policy, and an attempt by the Landlords to unlawfully increase the rent. As a result, the Tenant sought $12,000.00 in compensation and the return of their security deposit. When asked how they reached the $12,000.00 valuation, neither the Tenant nor their partner could provide an answer. Although the Tenant stated that they had a witness to the above noted issues, and I offered the Tenant the opportunity to call their witness to

provide testimony during the hearing, the Tenant declined, stating that their witness was at work.

The Landlords denied the above allegations of the Tenant and their partner. The Landlords pointed to numerous text message conversations between them and argued that it is clear from the text messages that they were in no way harassing the Tenant or speaking to them inappropriately. The Landlords stated that the washing machine was not broken but was cleaned at the Tenant's request and that they hired a plumber to fix the leak referred to by the Tenant. The Landlords stated that they even had a mould inspection completed at the Tenant's request which demonstrated no mould issues in the rental unit. The Landlords denied interfering with the Tenant's alarm system, stating that although they showed the Tenant how to work it and provided them with the code, the Tenant never used the alarm system. Finally, the Landlords stated that the Tenant never advised them of any safety concerns and disagreed with the Tenant's stated reason for ending the tenancy. The Landlords stated that the tenancy had not ended due to safety concerns but because the Tenant could not afford the rent and had found cheaper accommodation. The Landlords pointed to a large number of text messages before me in support of their testimony.

In their Cross-Application the Landlords sought $4,929.00 from the Tenant broken down as follows:

- $200.00 for carpet cleaning;
- $60.00 for fridge cleaning;
- $100.00 for wall repairs;
- $40.00 for exterior stairwell wall clearing;
- $1,500.00 in outstanding rent for July;
- $600.00 in outstanding rent for June;
- $100.00 for recovery of a previous filing fee for another dispute;
- $100.00 for recovery of the filing fee for this Application;
- $1,500.00 for breaking the contract/failing to give proper notice to end the tenancy;
- $180.60 for lock replacement; and
- $92.00 for the removal of a dresser.

The Landlords stated that the rental unit was not left clean and undamaged, except for pre-existing damage and reasonable wear and tear, as required. The Landlords stated that the carpet smelled like smoke and had to be cleaned by them with a carpet cleaner. The Landlords stated that it took approximately 1.5 hours and valued the cost at $200.00, which they state is what they were quoted for the carpet to be cleaned by a

third party. The Landlords stated that the fridge was not left clean and smelled terrible, necessitating 2 hours of cleaning, which the Landlords completed themselves at a cost of $60.00. The Landlords stated that the Tenant caused damage to the rental unit, which cost $100.00 to repair, and that there was chalk graffiti on the wall of the exterior stairwell to the rental unit, which had to be pressure washed at a cost of $40.00. In support of this testimony the Landlords pointed to text messages and several photographs. Finally the Landlords sought $92.00 for removal of a dresser left behind by the Tenant despite their requests that it be removed.

The Tenant and their partner denied causing any damage to the rental unit or leaving it unclean. The Tenant's partner stated that the Tenant runs a cleaning business and left the rental unit clean at the end of the tenancy. The Tenant argued that the carpets did not need to be cleaned as they had lived there less than one year, the carpets did not appear dirty, and did not smell of smoke as they did not smoke in the rental unit. The Tenant also argued that they should not be responsible for the power washing or dresser disposal costs as they did not cause the graffiti and the Landlords had agreed to keep the dresser but later changed their mind.

The Landlords also sought $1,500.00 in unpaid rent for July 2021, as the Tenant ended the tenancy earlier than allowable under the tenancy agreement and without proper notice, and $1,500.00 in lost rent for August 2021, as they state that they were unable to re-rent the unit until September 2021, despite their best efforts. The Landlords also pointed to term 54 of the tenancy agreement.

The Tenant denied owing the Landlords any rent or compensation for July or August of 2021. The Tenant and their partner stated that the Tenant should not owe any rent or compensation for lost rent, for July or August as the Landlords agreed that the Tenant could end the tenancy. The Tenant's partner stated that after the end of the tenancy, the Tenant and the Landlords had a telephone conversation wherein the Landlords advised them that all issues had been resolved and that they would not seek any further compensation from the Tenant in relation to the tenancy. The Landlords disagreed, stating that they did not give the Tenant permission to end their tenancy early, without proper notice or financial consequence, and that the conversation referred to above by the Tenant's partner never occurred.

Analysis

Although the Tenant sought $12,000.00 in compensation for monetary loss or other money owed, the Tenant failed to provide any evidence in support of their claims, other

than the affirmed testimony of their partner. However, the Landlords also provided affirmed testimony denying the claims made against them by the Tenant and their partner. Further to this, the Tenant failed to provide any explanation as to how they arrived at the amount being sought, and much of the Landlords' documentary evidence directly contradicted the testimony of the Tenant and their partner, such as text message chains. Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. Further to this, Policy Guideline #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the *Act*, regulations or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As the Landlords denied the claims made by the Tenant and their partner, no documentary evidence was submitted by the Tenant in support of their claims or the claim amount, documentary evidence before me from the Landlords which I find to be credible and reliable directly contradicts many of the claims made by the Tenant (such as their reason for ending the tenancy), and neither the Tenant nor their partner could provide a rationale for the $12,000.00 valuation of the Tenant's claim, I therefore find that the Tenant has failed to meet all four parts of the test outlined above or to satisfy me on a balance of probabilities that they are entitled to any of the $12,000.00 compensation claimed. As a result, I dismiss this portion of the Tenant's claim without leave to reapply.

I will now turn to the Landlord's claims. Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Although the Landlords sought $100.00 for damage to the rental unit, the Tenant denied causing any damage and the Landlords

failed to provide documentary evidence showing the state of the rental unit at the start of the tenancy. As a result, I find that the Landlords have failed to satisfy me that the damage shown in the photographs submitted occurred during the course of the Tenancy. I therefore dismiss this portion of the Landlords' claim without leave to reapply. I also dismiss the Landlords' claims for $40.00 in exterior stairwell wall clearing costs, as the Tenant denied that they or persons invited onto the property by them, caused the graffiti, and the Landlords failed to provide any evidence to corroborate their suspicions that it was caused by the Tenant or the Tenant's guests. Further to this, the nature of the words written are derogatory towards the Tenant, which leads me to believe this may have been an act of vandalism by someone other than the Tenant or their guests.

While the Landlords stated that the carpet in the rental unit smelled of smoke, no corroborating evidence was submitted to demonstrate this, such as witness statements or testimony, or documentation to that affect from a carpet cleaning company. The Tenant and their partner also denied that the carpet smelled and stated that the Tenant never smoked in the rental unit. Further to this, the parties agreed that the carpet did not look dirty. Based on the above, I find that the Landlords have failed to satisfy me on a balance of probabilities that carpet cleaning was required due to the smell of smoke, and as I am not satisfied that any other criteria set out in Policy Guideline #1 which would require that the Tenant steam clean the carpets has been met, such as a tenancy of one year or more or the presence of uncaged pets, I therefore dismiss the Landlords' claim for $200.00 in carpet cleaning costs without leave to reapply. I also dismiss the Landlords' claim for recovery of a $100.00 filing fee paid for a previous application that is not before me for adjudication.

Although the Tenant denied leaving the rental unit dirty at the hearing, texts between the Landlords and the Tenant satisfy me that there was a smell in the rental unit due to old soup being left in the refrigerator for a significant period of time. As a result, I grant the Landlords' claim for $60.00 in fridge cleaning costs. Texts between the Landlords and the Tenant also satisfy me that despite the Tenant's testimony to the contrary at the hearing, the Landlords did not want the Tenant to leave their dresser behind. As a result, I also grant the Landlords the $92.00 sought for removal and disposal of the dresser. Although the parties disputed whether keys to the rental unit were returned, the Landlords stated that they were not and the parties agreed that they had not been returned in person. Although the Tenant's partner stated that they left the keys for the Landlords outside the rental unit with a note, the Landlords denied that this was done and there is no documentary evidence before me to corroborate that they were in fact returned to the Landlords as required. As a result, I am satisfied on a balance of

probabilities by the Landlords that they were not, and I therefore grant the Landlords recovery of the $180.60 shown for lock replacement on the invoice submitted for my consideration.

Although the Tenant's partner stated that the Tenant and the Landlords verbally agreed that only $600.00 in rent was owed for June 2021, and that the Landlord would not seek any further rent or damages from the Tenant, I do not accept this as accurate. The Landlords denied that any such conversation occurred, term 54 of the tenancy agreement specifically references a $1,500.00 fee to be paid by the Tenant in the event that they end their tenancy prior to the end of the fixed term, which was September 30, 2021, and it is clear from the documentary evidence before me and the affirmed testimony of the parties, that the Tenant gave only one day notice on June 29, 2021, to end their tenancy the following day, June 30, 2021.

I find that the Tenant breached section 45(2) of the *Act* when they ended their tenancy on a date earlier than the end date for the fixed-term and without the required amount of notice. The Landlords stated that they suffered a loss of rent in the amount of $1,500.00 for July of 2021 and $1,500.00 for August 2021, as a result of the Tenant's improper end to the tenancy as they were unable to re-rent the unit until September 2021, despite their best efforts. Although the Tenant argued that they should not owe these amounts, they did not dispute the Landlords' affirmed testimony that they were unsuccessful in re-renting the unit for July or August despite reasonable efforts to do so. As a result, I accept the Landlords' testimony in this regard as fact. As a result, and pursuant to sections 7, 45(2), and term 54 of the tenancy agreement, which I find to be a liquidated damages clause in the amount of $1,500.00 for ending the tenancy early, I therefore grant the Landlord the $3,000.00 sought. As the parties also agreed that $600.00 was owed for June 2021, I also grant the Landlords recovery of this amount. As the Landlords were largely successful in their Application, I also grant them recovery of the $100,00 filing fee pursuant to section 72(1) of the *Act*.

Having made the above findings, I will now turn to the matter of the security deposit. Although the affirmed testimony of the parties at the hearing and copies of text messages between them, satisfy me that the Tenant agreed in writing that the Landlords could retain the $750.00 security deposit in full at the end of the tenancy for unpaid June rent an "any costs incurred" by the Landlords, I find that the Landlords' right to do so under section 38(4) of the *Act* was revoked pursuant to section 38(5) of the *Act* as I am satisfied that the Landlords breached sections 23 and 35 of the *Act* in relation to the scheduling and completion of condition inspections and reports, meaning that the Landlords therefore extinguished their rights to claim against it for damage only,

under section 24(2) and 36(2) of the *Act*. However, as the parties agreed that the Tenant did not provide a proper forwarding address in writing, I therefore find that the requirement to claim against the security deposit or return it under section 38(1) of the *Act* was never triggered and that the Landlords have therefore not improperly retained the Tenant's security deposit.

Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlords to retain the $750.00 security deposit, in full, as partial repayment of the above owed amounts. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order for the balance owing of **$3,282.60** ($4,032.60, less the $750.00 security deposit), and I order the Tenant to pay this amount to the Landlords.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **$3,282.60**, and I order the Tenant to pay this amount to the Landlords. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated Monetary Order, nor my authority to render this decision and grant the Monetary Order, are affected by the fact that this decision and the associated Monetary Order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: May 11, 2022

Residential Tenancy Branch