Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding First Carnarvon Apartments Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S

Introduction

The Landlord filed an Application for Dispute Resolution on October 19, 2021 seeking compensation for damages to the rental unit, unpaid rent, and other money owed. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 2, 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 in their evidence. They confirmed the basic details in the hearing. The tenancy started on June 1, 2020 as stated in that document. The rent amount of $1,850 did not change during the course of the tenancy. The agreement is specific that it would change to a month-t0-month

tenancy after the initial one-year fixed term completed. The Tenant paid a security deposit of $925 and a pet damage deposit of $925.

The agreement states

> The tenant may end a periodic tenancy by giving the landlord at least one month's written notice. Notice must be given on or before the last day of the month, having an effective date of the last day of the following month and must include the address of the rental unit, the date the tenancy is to end, and the specific grounds for ending the tenancy. . . This notice must be signed and dated by the tenant.

The Tenant presented that they notified the Landlord of their move out by email on October 5, 2021, in the Landlord's evidence. They moved out in the morning of October 6, the following day. They had been looking for other apartments for 5 or 6 months prior to this, from when construction began in the building of the rental unit around June 2021. The resident manager they regularly communicated with on maters concerning the tenancy was aware of the Tenant's desire to move. They had "multiple discussions" with this manager; the Tenant confirmed they did not give a written notice to this manager with a firm date for moving out as a result of these discussions.

The Landlord here presented that they came on as the Landlord in June 2020, and provided an email to all building residents, including the Tenant, to inform them of their role and to specify the correct channel of communication on things, which was to them directly. They posit that the Tenant was aware of this email address because of their past inquiry on a parking stall; additionally, the Tenant had sent rent to this email address in the past.

The Landlord seeks $1,850 as rent for the month of October 2021. The Tenant sent their October 5 notification of their next-day move out after the Landlord inquired on October 2021 rent that was not paid on October 1st.

The Landlord presented an email dated October 16 wherein the Tenant stated: "I'm sure the agreement on the lease states we must give notice in writing, however that lease expired sometime ago and [we] have been paying on a month to month basis." Further: "We gave notice to your staff, written or not [we] would of [*sic*] assumed that info would of [*sic*] been shared."

In response to this on the same day, the Landlord stated: "To end a tenancy for October 1, 2021 notice should have been provided on or before August 31, 2021." The Landlord also reproduced for the Tenant in their response the passage I set out above.

The Landlord also claims a total of $532.35 for cleaning and repainting in the rental unit. This is because of damages and the unclean state of the rental unit left by the Tenant at the end.

The Landlord presented that there was no opportunity to conduct a joint inspection meeting. The Tenant recalled meeting with the resident manager who was showing the unit to a prospective tenant on October 6. They “didn’t actually speak about damages, and [the resident manager] didn’t mention it.”

The Landlord provided an invoice showing cleaning in the amount of $269.85. The Landlord in the hearing stated this was a standard amount every time an end of tenancy requires additional cleaning after tenants have moved out. The Tenant took issue with the validity of this invoice, stating the QR code did not work properly and they could not establish through business registries that the company involved was a legal business entity. Photos provided show items left behind by the Tenant, including a chair and items on the balcony. There are also images showing dust on the floor and other more minor debris.

The Landlord also provided an invoice for the painting required in the rental unit. This amount is $262.50. Photos show damage to the walls in the form of a series of holes, and small gouges to the drywall in more than one area.

The Tenant stated the unit was “more or less clean, minus minor things like dust”. They acknowledged they left behind small items and took good care of the apartment. The Tenant confirmed they did not have a formal inspection meeting with the Landlord at the end of the tenancy. They also stated that some of the damage was present when they first moved in to the rental unit.

Analysis

The *Act* s. 45(1) specifies that a tenant may end a periodic tenancy by giving the 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.

This section also specifies that a notice given by a tenant must comply with the s. 52 stipulations of form and content. Those are: in writing, with signature and date, the address of the rental unit, and the effective date of the notice.

I find the parties had a fixed-term tenancy agreement in place from June 1, 2020 to May 31, 2021. I find the agreement became a month-to-month, or periodic, tenancy after that date. On this point, the agreement at paragraph 26 specifies that the Tenant may end the periodic tenancy by giving the Landlord at least one month's written notice. This is in line with s. 45 of the *Act*.

Here, the Tenant provided an email to the Landlord on October 5, stating they were moving out the following day. This is not a legal notice to end the tenancy: it is not in writing and does not provide the required information; moreover, it does not comply with the requirements of s. 45 in terms of the timeline.

The Tenant's rationale is that they communicated with the resident manager about their desire to move eventually. This is vague, and not a legal means of notifying the Landlord of the end of the tenancy. This does not nullify the obligation of the Tenant regarding proper notification as set out in both the *Act* and the tenancy agreement they were a party to. The Tenant's submissions and response to the Landlord on this issue are legally incorrect.

Because they did not provide a legally valid notice to end the tenancy, the Tenant is responsible for the October 2021 rent amount in full. This is $1,850. I so award that amount to the Landlord here.

Concerning the state of the rental unit at the end of the tenancy, 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.

The *Act* s. 23 requires the parties together to inspect the condition of the rental unit. It is the responsibility of the Landlord to offer at least 2 opportunities for the inspection. Further, both parties must complete a condition inspection report, signing the report, with a copy provided to the tenant.

The *Act* re-states this requirement for the end of a tenancy in s. 35. The Landlord must offer at least 2 opportunities for a final inspection and must complete a condition

inspection report. Where a Tenant does not comply, the Landlord may unilaterally make the inspection and complete the report without a tenant, provided the Landlord offered at least 2 opportunities for the final inspection meeting.

Respecting the security deposit and pet damage deposit, s. 38(5) provides that the Landlord's right to retain the security deposit and/or pet damage deposit is extinguished where a landlord failed to meet either start- or end-of-tenancy requirements for a report on the condition of the rental unit.

More generally, 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 did not provide ample evidence to show the need for additional cleaning or repainting within the rental unit. There is no measure of comparison to the start of the tenancy, which is what a Condition Inspection Report would normally accomplish for that purpose. I dismiss the Landlord's claim for cleaning and repainting within the rental unit for this reason. The Landlord did not meet the requirement for inspections either upon move-in or move-out. The Landlord's right to any part of the security deposit is extinguished based on s. 38(5) applying to the situation here.

In total, I find the Landlord has established a claim of $1,850 for October 2021 rent. I award no compensation or cleaning or repainting, and dismiss this piece of the Landlord's Application, without leave to reapply.

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 $1,850. After setting off the security deposit $925, and the pet damage deposit of $925, there is no balance owing. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and make no other compensation award to them.

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 grant a $100 Monetary Order in this amount to the Landlord.

Conclusion

Pursuant to s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of $100 for 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: May 4, 2022

Residential Tenancy Branch