Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNSD, MNDCT
LL: MNDL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; an
- a monetary order for money owed or monetary loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other's Applications and evidentiary materials.

Issue(s) to be Decided

Are the parties entitled to the monetary orders requested in their applications?

Is the landlord entitled to recovery of their filing fee?

Is the tenant entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on November 1, 2020, and was to end on October 31, 2021. Monthly rent was set at $1,500.00, payable on the first of the month. The landlord had collected a security deposit in the amount of $750.00 at the beginning of the tenancy. The landlord testified that they had returned $670.00 by way of cheque to the tenant's forwarding address on September 8, 2021. The tenant confirmed their forwarding address during the hearing, which the landlord testified was the address to where the cheque was sent. The landlord applied to retain the remaining $80.00 in compensation for carpet cleaning on September 13, 2021, which the landlord still holds. The landlord obtained and submitted a copy of the cheque after the hearing, which was sent to the tenant's forwarding address as confirmed in the hearing.

The landlord submitted an invoice in the amount of $80.00 plus tax for carpet cleaning on August 31, 2021. The landlord is seeking reimbursement for the $80, plus recovery of the filing fee for their application. The landlord argued that the tenant would have been responsible for the cost of carpet cleaning at the end of the fixed-term tenancy, which was a one year term.

The tenant disputes that they had received the cheque from the landlord. The tenant is requesting that the landlord return their entire security deposit to them. The tenant also disputes the landlord's claim for carpet cleaning as they resided in the rental unit for a period of less than a year, and the carpet was brand new. The tenant testified that they had no choice but to move out after the landlord failed to comply with an order to repair the broken patio door lock.

The tenant is seeking compensation related to the landlord's failure to comply with a previous order made by an Arbitrator on March 31, 2021.

The Arbitrator had made the following order:

Pursuant to section 62(3) of the *Act*, the Landlord is ordered to repair or replace the handle lock on the patio door of the rental unit so that there is a working handle lock on the patio door. This is to be done by April 27, 2021.

The tenant testified that the landlord did not make this repair, and the tenant had to find new housing as the door did not shut properly, and the tenant did not feel safe. The tenant testified that they had to pay $260.00 in moving costs, which they are seeking reimbursement for. The tenant also requested $200.00, which the tenant testified was the equivalent of $25.00 by 8 months, which the tenant felt would function as a deterrent as the landlord would have normally charged a $25.00 late fee per month.

The landlord disputes the tenant's claim for compensation as the tenant had decided to move out on August 31, 2021. The landlord submitted photos and video of the patio lock, which the landlord testified was functioning properly. The landlord disputes that the tenant's safety was jeopardized, and the tenant had to move out as a result. The landlord testified that the past and current tenants do not have an issue with the lock.

Analysis

Section 37(2)(a) of the *Act* stipulates 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.

I note that RTB Policy Guideline #1 states the following about carpet cleaning:

"The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy."

The tenancy agreement signed by both parties includes the following condition:

“23. CARPETS. Carpets shall be professionally cleaned or, if recommended by the Landlord, by the Tenant at the Tenant’s expense annually and immediately prior to the Tenant vacating the premises”

I note that RTB Policy Guideline simply states that after a year’s tenancy, the tenant is generally responsible for steam cleaning or shampooing. This is to maintain reasonable standards of cleanliness as stated above. The Policy Guideline does not stipulate a minimum period before the tenant may be responsible. In consideration of the fact that the tenant had agreed to professionally clean the rental unit prior to vacating the rental unit, but did not do so, I find that the landlord is entitled to reimbursement for the cost of carpet cleaning as agreed to in the written agreement. I do not find this condition to be unconscionable or oppressive considering the fact the tenant was aware of this requirement when they had entered into the fixed-term tenancy, and although the carpet may have been clean at the beginning of tenancy, the tenant did reside in the rental unit for at least 10 months. Accordingly, the landlord will be provided with a monetary order of $80.00 for reimbursement for carpet cleaning.

I allow the landlord to recover the $100.00 filing fee as they were successful with their application.

I will now consider the tenant’s claims. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the other party had caused the losses in the amounts claimed.

Residential Tenancy Policy Guideline #5 addresses a claimant’s duty to minimize loss and states the following:

“Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation[2]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

In this case, I find that an Arbitrator had clearly made an order that the landlord repair or replace the patio door lock on or before April 27, 2021. The tenant claims that not only did the landlord not repair or replace the patio door lock, the tenant had no choice but to move out for their own personal safety.

In consideration of the evidence before me, I am not satisfied that the tenant had no choice but to end the tenancy and move after the landlord's non-compliance with the Arbitrator's Order. I note that a damaged or defective lock would fall under emergency repairs under section 33(1)(c) of the *Act.* In this case, I find that the tenant failed to establish that they had considered and exhausted other options such as obtaining the services of a locksmith, filing an application for dispute resolution for emergency repairs or associated compensation, and/or finding alternative accommodation until the lock is fixed. Although I sympathize with the tenant as the tenant waited four months for the landlord to fix the patio door before they had moved out, I find that the tenant failed to pursue any of these options. As noted above, the tenant has a duty to mitigate their losses.

I am not satisfied that the tenant had made an effort to mitigate their losses as is required by section 7(2) of the *Act.* I find that the tenant had several options that would not have necessitated that the tenant end the tenancy and move out. For these reasons, I dismiss the tenant's claims for moving costs without leave to reapply.

The tenant also requested $200.00 in their claim. I find that the tenant has failed to establish how this amount was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application.

Although an administrative penalty be considered under section 87.3 of the *Act*. The Director has not delegated to me the authority to impose administrative penalties under section 87.3. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative process is separate from dispute resolution and if an administrative penalty is levied against a landlord, it is a debt due to government and not the tenant.

As noted in Residential Tenancy Policy Guideline #16, “An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.”

I am not satisfied that the tenant has established how the $200.00 is a loss associated with the landlord’s contravention of the Act. As I have no delegated authority to impose an administrative penalty in any form or amount, I dismiss this portion of the tenant’s claim without leave to reapply.

Lastly, the tenant filed an application under section 38 for the return of their security deposit. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant’s security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address.

In this case, I am satisfied that the landlord had filed an application to retain the tenant’s security deposit within 13 days of the end of this tenancy. It is undisputed that the landlord had retained $80.00 for the professional cleaning. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $80.00 in satisfaction of this monetary award granted.

Although the landlord testified that they had sent a cheque to the tenant for $670.00, the tenant denies having received it. Although the landlord may have attempted to provide the tenant with a cheque in this amount, I am not satisfied that this cheque was received nor cashed by the tenant. Accordingly, I order that the landlord re-issue a new cheque to the tenant in the amount of $670.00 less $100.00 for the filing granted in this application unless the landlord can provide the tenant with proof that the cheque was deposited.

Conclusion

I allow the landlord's monetary claim for carpet cleaning and recovery of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $180.00 of the tenant's security deposit in satisfaction of these monetary awards granted.

I order that the landlord return the remaining $570.00 to the tenant unless the landlord can establish that the previous cheque dated September 8, 2021 was cashed.

In the case that the landlord has proof that the tenant had cashed the September 8, 2021 cheque, the landlord is provided with a monetary order in the amount of $100.00 for recovery of the filing fee. The tenant must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

I dismiss the remaining claims without leave to reapply.

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

Dated: May 24, 2022

Residential Tenancy Branch