Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on July 30, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on February 14, 2022, and was attended by the agent for the Landlord L.B. (the Agent), the Tenant T.N. and the applicant R.E., who was the co-signor to the Tenant's tenancy agreement but never resided in the rental unit. All testimony provided was affirmed. The parties and their agent(s) 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 (the 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 me and 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 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 the Notice of Hearing. As the Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing, and raised no concerns with regards to the date or method of service, I therefore find that they were sufficiently served for the purposes of the *Act* and the Rules of Procedure. The hearing therefore proceeded as scheduled.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, 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 confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

Although both T.N. and R.E. were named as tenants and applicants in the Application, at the hearing the parties agreed that only T.N. was a tenant, and that R.E. was simply a co-signor to the tenancy agreement who never resided in the rental unit. As a result, only T.N. will be referred to as the “Tenant”.

Preliminary Matter #2

The Rules of Procedure state that in advance of the hearing, the parties must exchange the documentary evidence intended to be relied on by them at the hearing.

Although the Agent acknowledged receiving the documentary evidence before me from the Tenant, the Tenant denied receipt of the Landlord’s photographic evidence. The Agent stated that the registered mail was sent to the Tenant’s forwarding address on January 24, 2022, and provided the registered mail tracking number. The Agent stated that the registered mail was delivered on January 26, 2022, and the Tenant acknowledged receipt of the registered mail. The Tenant also acknowledged that the address used by the Agent to send the registered mail was correct but denied that the package included the photographic evidence before me from the Landlord. I offered the parties the option to adjourn and re-serve evidence, but the Tenant declined. Based on the registered mail tracking information provided by the Agent, the Tenant's affirmed

testimony that the address used for the registered mail was correct, and the fact that the Tenant acknowledged receiving all the remaining documentary evidence before me, I am satisfied on a balance of probabilities that the Agent's testimony regarding inclusion of the photographic evidence is credible and reliable. I therefore find that the Tenant was properly served with all of the documentary evidence before me, including the photographs. As a result, I therefore accept the documentary evidence before me from both of the parties for consideration.

Issue(s) to be Decided

Is the Landlord entitled to the recovery of July 2021 rent?

Is the Landlord entitle to compensation for monetary loss or other money owed?

Is the Landlord entitled to retention of the security deposit and/or pet damage deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy commenced on February 1, 2018, that rent in the amount of $900.00 was due on the first day of each month and that a pet deposit and a security deposit were both required in the amount of $450.00 each. The Agent stated that they still hold in trust the full $900.00 in deposits.

The parties agreed that there was no agreement between them for the Landlord to use the deposits during the tenancy, that there was no order from the Residential Tenancy Branch (the Branch) granting the Landlord authorization to use the deposits for any reason, that there was no unpaid Monetary Order against the Tenant by the Landlord at the end of the tenancy and that there was no agreement at the end of the tendency for the Landlord to keep any portion of the deposit.

The parties agreed that the Tenant gave written notice on June 23, 2021, stating that they planned to end the tenancy on August 1, 2021, that they would begin moving their belongings out on June 29, 2021, and that they would pay rent on July 1, 2021. At the hearing the Tenant stated that there was a bed bug situation in the rental unit and wanted to move out earlier than that, but that pest control company told them that they

were not to move out until the bed bug situation had been resolved, which would be approximately 3 months. The Tenant stated that for the first six months of the tenancy they did not know that there were bed bugs and that they lived there for two to two and a half years until they reported it to the Landlord in approximately March of 2021. The parties agreed that the Landlord took action in relation to the bed bugs once advised by the Tenant, but the Agent denied any knowledge of the pest control company stating that the Tenant was prevented from moving. The Agent also stated that despite what the pest control company may or may not have advised the Tenant, landlords cannot prevent tenants from ending their tenancies and moving out.

The parties agreed that move-in and move-out condition inspections were completed and that copies of the move-in and move-out condition inspection forms were provided to the Tenant as required by the *Act* and the regulations. The Agent stated that a pre move-out inspection was completed by their spouse on June 29, 2022, or June 30, 2022, and that the final move-out condition inspection was completed on July 23, 2022, at 1:00 P.M. The Agent stated that the move-in inspection was completed on February 1, 2018, as shown on the condition inspection report, and the Tenant did not dispute this statement. The Agent stated that they received the Tenant's forwarding address on approximately July 12, 2021, or July 13, 2021, as it was initially delivered to the wrong address on July 7, 2021. The Agent provided the registered mail tracking number for the envelope received containing the Tenant's forwarding address. The Tenant said that the registered mail was sent July 4, 2021, and acknowledged that they may have used the wrong address in error.

The parties agreed that rent for July was paid in the amount of $992.00 and that this amount represents the monthly rent amount due at the time the tenancy ended. The At the hearing the Agent stated that the costs shown in the Application and the Monetary Order Worksheet are not accurate, and that some of the amounts are lower than listed. At the hearing the Agent sought $235.00 for general cleaning costs, $90.00 for carpet cleaning, $80.00 for the cost of flea removal, $50.00 for repairs to the fridge, as well as rent for July 2021 in the amount of $992.00, and recovery of the $100.00 filing fee. The Tenant argued that they should not be responsible for the cost of July rent as the Landlord had plenty of time to re-rent the rental unit for either July 1, 2021, or July 15, 2021, and that the vacancy rate for the community in which the rental unit is located is very low, which should have made re-rental easy. The Tenant also argued that the Landlord was aware for months prior to the issuance of their notice to end tenancy that they wanted to move out do to the bed bug situation and acknowledged that they perhaps mistakenly believed that they needed to stay until the bed bug situation was

resolved. The Agent disagreed, stating that although the Tenant had provided proper notice to move out at the end of July/the start of August, the Tenant actually moved out significantly earlier unbeknownst to the Landlord, which impacted the Landlord's ability to re-rent the unit as early as suggested by the Tenant. The parties also disagreed about whether or not to the Tenant had been advised that the Landlord had found a new tenant to rent the rental unit for July 1, 2021. The Tenant stated that they were advised that the Landlord that they had found a tenant to rent the unit for July 1, 2021, but the Agent disagreed, stating that they had advised the Tenant only that there had been interest to rent the rental unit for July 1, 2021, and that if it were able to be re-rent the unit for July 1, 2021, the Tenant would not owe any rent for July. However, the Agent stated that they were not able to rent the rental unit until August 1, 2021, and that although there were applicant interested in renting the unit earlier, they were not suitable tenants due to things such as income and reference checks.

The Tenant argued that the Landlord never put up a sign advertising the rental unit for rent, but the agent disagreed, stating that they put a sign up in front of the apartment and that they placed advertisements online at a rate of $1,100.00, which represented current market rent for the unit. The Agent also stated that the Tenant did not return the keys until July, which the Tenant did not dispute.

The parties were agreed that the Tenant owes $90.00 to the Landlord for carpet cleaning and $80.00 for the cost of flea removal. However, the Tenant disputed the other costs sought by the Landlord for cleaning and repairs. Although the Tenant stated that they cleaned the rental unit themselves, and that their mother spent three days cleaning the rental unit top to bottom, the Agent argued that it was not left reasonably clean. The Agent stated that the stove required cleaning at a cost of $75.00 and that they also spent four hours cleaning the rest of the apartment. Although the Agent acknowledged that the Tenant had done some cleaning, they stated that it simply was not enough and pointed to the photographs in the documentary evidence before me. The Agent stated that they also did this cleaning themselves to save on costs, and that they charged only $75.00 for the stove and $40.00 per hour, including cleaning supplies, for the remaining four hours of cleaning, which they argued was quite reasonable. The Tenant stated that these costs were unreasonable as they left the rental unit in better condition than it was at the start of the tenancy and pointed to their own photographs.

The Agent also sought $50.00 to replace shelves in the refrigerator as they stated that the fridge was new at the beginning of the tenancy and damaged at the end. The Agent

stated that they had ordered shelves before for the same type of refrigerator at a cost of approximately $50.00, and therefore they have quoted this amount for the replacement of the damage shelves. The Tenant denied damaging the fridge and denied that it was new at the start of the tenancy. The Tenant argued that there were no shelves in the door of the refrigerator at the start of the tendency, and that the fridge also leaked liquid, made noise, and had seen better days. Overall, the Tenant argued that they did not damage the refrigerator and were therefore not responsible for any repair costs.

Both parties submitted documentary evidence for my consideration, including but not limited to photographs, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilties (the 10 Day Notice) for the month of July 2021, the Tenant's written notice to end tenancy, condition inspection reports, photographs, and written statements/communications/submissions.

Analysis

Based on the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies existed between the parties, that rent in the amount of $992.00 was due each month at the time the tenancy ended, and that the Landlord still holds deposits in the amount of $900.00, which represents $450.00 for a pet damage deposit and $450.00 for a security deposit.

Section 37 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. Policy Guideline #1 states that tenants may be expected to steam clean or shampoo the carpets at the end of a tenancy regardless of the length of the tenancy, if they, or another occupant, have had pets which were not caged. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces where a tenant has used the premises in a reasonable fashion.

Section 7 of the *Act* states that if a landlord tenant does not comply with the *Act,* the regulations, or their tenancy agreement, the noncomplying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other parties noncompliance with the *Act,* the regulations, or the tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence before me and the testimony of the parties at the hearing, I am satisfied that the Tenant provided the Landlord with notice on June 23, 2021, that they would be ending their tenancy as of August 1, 2021, which constitutes proper notice under section 45 of the *Act*. Despite this fact, I am satisfied that the Tenant vacated the rental unit early, on either June 29, 2021, or June 30, 2021, without first notifying the Landlord that they were vacating early. Further to this, I am satisfied that the Tenant's failure to properly notify the Landlord that they were ending their tenancy earlier than stated in the notice to end tenancy, impacted the Landlord's ability to mitigate their loss for July, 2021, rent. In the Tenants notice to end tenancy the Tenant also acknowledged that they would pay rent on July 1, 2021, which I find means that the Tenant was aware of their obligation under the *Act* to pay rent for July 2021, based on the date their notice was given. Finally, based on the notice to end tenancy, the date the notice to end tenancy was received, and the data upon which rent was due under the tenancy agreement, I find that the Tenant breached section 45(1) of the *Act* when they vacated the rental unit earlier than July 31, 2021, and did not pay rent for July 2021.

I am satisfied that the Landlord made reasonable attempts to re-rent the rental unit at a reasonably economic rate, and that the Landlord's ability to re-rent the unit earlier than August 1, 2021, was hindered by the fact that the Tenant vacated the rental unit early without first telling the Landlord. As a result of the above, I therefore grant the Landlord the $992.00 in lost rent sought for July 2021. I also grant the landlord the $80.00 sought for flea removal and the $90.00 sought for carpet cleaning as the parties agreed that these amounts were owed. Although the Tenant disputed the Agent's testimony that the rental unit was not left reasonably clean after the end of the tenancy, I am satisfied by the Agent's testimony, the condition inspection report, and the photographic evidence before me from the Landlord, that the rental unit was not left reasonably clean as required by section 27 of the *Act*. I also find that the Agent attempted to mitigate their loss by cleaning the rental unit themselves at a reasonably economic rate, rather than hiring a professional company to complete the cleaning. As a result, I grant the Landlord the $235.00 sought for cleaning costs.

Although the Tenant disputed damaging the fridge, I note that there is no fridge damage noted in the move-in condition inspection report before me, and during the hearing the parties acknowledge that they completed the move-in condition inspection and report together at the start of the tenancy. Section 21 of the regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this

part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Although the tenant denied damaging the refrigerator, the Tenant did not submit any documentary or other evidence that I find constitutes a preponderance of evidence that would demonstrate to my satisfaction that the fridge was in a damaged state at the start of the tenancy, contrary to what is stated in the move-in condition inspection report. As a result, I find that the Landlord has satisfied me that the Tenant damaged the refrigerator during the tenancy and I therefore grant them the $50.00 sought for replacement shelves.

As the Landlord was successful in their claims, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the *Act*. Having made this finding, I will now turn my mind to the matter of the security deposit and the pet damage deposit. I am satisfied based on the documentary evidence and testimony before me that the tenancy ended on either June 29, 2021, or June 30, 2021, and that the Tenant's forwarding address was received by the Landlord or their agent in writing no earlier than July 12, 2021. As the Landlord filed a claim against the Tenant's security deposit and pet damage deposit on July 30, 2021, and the claim relates to costs associated with the Tenant's pet, among other things, I am satisfied that the Landlord therefore complied with section 38(1) of the *Act*. As the parties agreed that move-in and move-out condition inspections were completed in compliance with the *Act* and the regulations, and I am satisfied that the Tenant provided their forwarding address in writing to the Landlord within one year of the end of the tenancy, I am also satisfied that neither party extinguished their rights in relation to the security deposit.

Based on the above I therefore authorized the Landlord to retain the full amount of the deposits, which is $900.00, towards the above noted costs pursuant to section 72(2)(b) of the *Act*. Pursuant to section 67 of the *Act* I therefore grant the Landlord a Monetary Order in the amount of **$647.00**, and I order the Tenant and the Co-Signor to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit in the amount of $450.00 each, in partial repayment of the $1,547.00 owed.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$647.00**. The Landlord is provided with this Order in the above terms and the Tenant and Co-Signor must be served with this Order as soon as possible. Should the Tenant and the Co-Signor 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 order, nor my authority to render this decision and grant the order, are affected by the fact that this decision and the associated 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 Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: June 21, 2022

Residential Tenancy Branch