Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on October 14, 2021 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on June 6, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the hearing. The Tenant did not attend and did not provide documentary evidence prior to this hearing.

Preliminary Matter – notification of hearing to Tenant

In the hearing the Landlord verified that they served the Notice of Dispute Resolution to the Tenant via email on October 20, 2021. They utilized this method at the same time they applied to the Residential Tenancy Branch for substituted service, and before having the Residential Tenancy Branch authorization for that method of service. The branch approved this method of service on October 28, 2021, with an Adjudicator being satisfied from the Landlord's record that the method of service was completed – the primary evidence being the Tenant's confirmation they received the Notice of Dispute Resolution.

The Landlord provided a copy of the Tenant's response to this initial email, showing the Tenant's response and indication that the matter was before the Residential Tenancy Branch for dispute resolution.

In consideration of this evidence, and with consideration to s. 89 of the *Act*, I find the Landlord served the notice of this hearing, as well as their prepared documentary evidence, to the Tenant on October 20, 2021.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement for this hearing and spoke to its terms. The Tenant and Landlord signed the agreement on November 1, 2020. The tenancy started on November 1, 2020, set for a fixed term to end on November 1, 2021. The monthly rent at the start of the tenancy was $1,600. The Tenant paid a security deposit of $800.

The tenancy ended on October 1, 2021, as the Landlord provided in the hearing. According to the Landlord, this was one month earlier than anticipated in the agreement.

The Landlord provided a timeline of the matter of a reduction in rent because of a pending repair to a skylight that was leaking. This provides the date of January 4, 2021 as the “water leak first noticed by [the Tenant]”, and the Landlord then trying to have the issue repaired, requiring coordination with the building manager and contractors. The Landlord received an estimate for the repair on April 19, and the repair was completed on May 13.

The timeline shows, by June 13, the Tenant claiming there was no leak. In the hearing the Landlord stated the leak was resolved on June 10 – the timeline provides this as the date the contractor returned to inspect and reseal the skylight.

The Landlord provided an email they had with the Tenant, dated July 2. The Tenant provided that “the discount started in March” and asked for January-February to be reduced retroactively. This refers to the agreement in place between the parties that rent was reduced by $100 from March onwards. The Landlord submits this arrangement ended as of July 2021, even though the Tenant continued to pay reduced

rent for July, August, and the final month of September. These reduced rent amounts are shown in the e-transfer record for each of those months provided by the Landlord in their evidence.

The Landlord's claim consists of the full amount of this reduced rent, at $300. The timeline they provided includes a list of their queries to the Tenant whether the skylight leak was continuing, a swell as a record of rainfall on the following dates.

The Landlord retained $400 from the security deposit, with the addition of the Application filing fee for this dispute. The Landlord returned the balance of the security deposit to the Tenant on October 15, as shown on the record in the Landlord's evidence.

On October 8, the Tenant messaged to the Landlord to say they received only $400 of the original deposit. They stated: "You were speaking of taking $300 without my consent, and now you are taking $100 more?" The Landlord responded to this to inform the Tenant they would apply for dispute resolution, and "for that to happen there is a $100 application fee."

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy

agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The Landlord here applies to recover the $100 deduction that the Tenant did not pay for each month of July, August, and September. I find they did not mitigate their loss by strictly managing the rent paid by the Tenant at the time. There is no record of the Landlord stating they were withdrawing that reduced rent offer; by the following months of August and September, the Landlord did not rectify this.

The *Act* s. 26 sets the obligation on the Tenant; however, there was no information from the Landlord in place to state the reduced rent agreement was over and that they would assert their rights under the *Act*. The Landlord did not choose to end the tenancy for unpaid rent at that time and that is the tool available to them when a tenant is not paying the full agreed-upon rent amount. Instead, they accepted reduced rent for the next two months and this becomes an issue of *estoppel*. Also, there is no evidence of a final dialogue between the parties whereby the Landlord proposed an agreement with the Tenant to withhold some of the security deposit for this reason.

The *Act* s. 38 governs a landlord's use of the security deposit at the end of a tenancy. Subsection (4) provides that a landlord may retain an amount if the tenant agrees in writing, or the director orders that the landlord may retain that amount. Neither was in place in this matter where the Landlord unilaterally, and without authority, did so.

The Landlord went ahead and returned the remaining portion of the security deposit to the Tenant without authorization and without the matter being settled. Further, they withheld an amount for the filing fee of this dispute resolution hearing, with no authority to do so, even prior to their Application for this hearing. In this regard, the Landlord did not come to an agreement with the Tenant at the end of the tenancy; this is not *mitigating* a monetary loss to them whereby they went ahead with a dispute resolution hearing without any discussion of the agreement, thereby incurring the cost of the filing fee, and then assuming it was owed to them prior to any Application being made.

The Landlord here pre-empted the authority or agreement for them to retain a part of the security deposit. Concerning a basic amount owed to them, they did not mitigate by managing the proper amount of rent owed to them for July, August, or September by claiming it at that time or at the end of the tenancy. Because the Landlord did not mitigate the damage or loss, I order the return of the amount they had retained – without authority -- from the security deposit, and the filing fee amount. That is a monetary order, to the Tenant, for $400.

Conclusion

I dismiss the Landlord's Application for compensation and reimbursement for the filing fee. This is without leave to reapply, meaning the Landlord may not re-apply to the Residential Tenancy Branch for this relief.

Pursuant to s. 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of $400. I provide the Tenant this Monetary Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Order 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: June 13, 2022

Residential Tenancy Branch